

(26,335)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 868.

JOHN DILLON

vs.

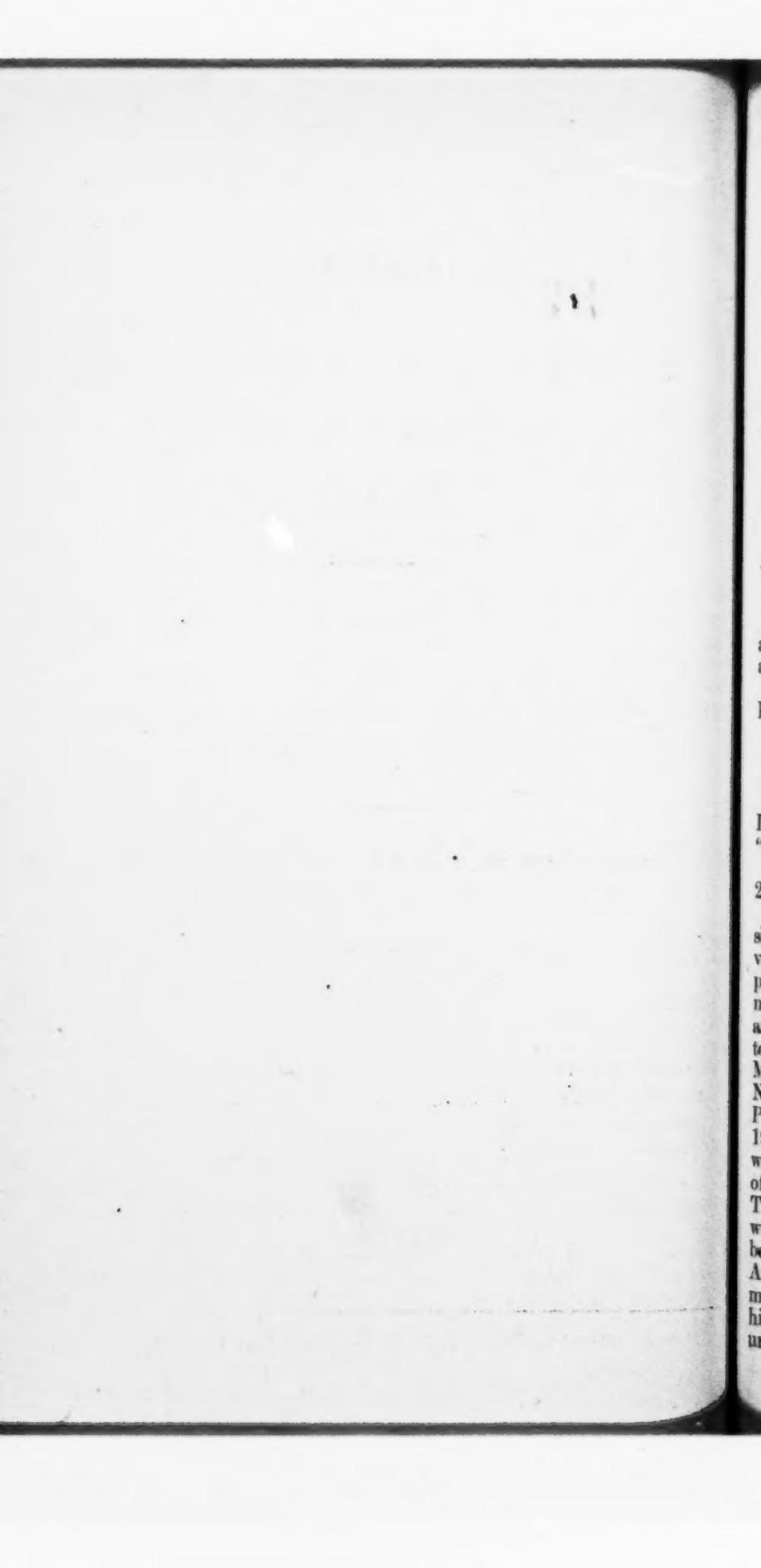
STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF
STEAMSHIP "STRATHEARN."

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

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Original Print

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1 In the United States Circuit Court of Appeals, Fifth Circuit.

Number 3140.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

Silas Blake Axtell, L. W. Nelson, W. J. Waggespack, and Herbert W. Waggespack, for appellant.

J. E. D. Yonge, for appellee.

Frederick R. Coudert and Howard Thayer Kingsbury, specially appearing on behalf of the British Vice-Consul at Pensacola, Florida, as *amicus curiae*.

Before Walker and Batts, Circuit Judges, and Evans, District Judge.

Statement of the Case.

The appellant, John Dillon, a subject of Great Britain, shipped at Liverpool, England, on May 8, 1916, as carpenter, on the steamship "Strathearn", then and at the time of the filing of the libel in this case a vessel of British registry and enrollment, owned by the 2 Strathearn Steamship Company, Limited, a corporation organized and existing under the laws of Great Britain. By the shipping articles signed by him the appellant agreed to serve "on a voyage from or exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master." On that voyage the Strathearn proceeded from Newport News to a port in South America, and from the last-named port to Pensacola, Florida, arriving there on July 31, 1916. On August 2, 1916, while the Strathearn was in the port of Pensacola, John Dillon, who was still in the employment of the ship as carpenter, demanded of the master of the ship one-half of the wages he then had earned. The master refused to comply with this demand, and no payment was made thereon. Prior to the time of that demand nothing had been paid to Dillon on his wages since the ship left a port in South America about two months before. At the time the demand was made the amount of wages earned by Dillon, less what had been paid him thereon, was approximately \$125, no part of which was due under the terms of the shipping articles signed by Dillon. After

the master refused to comply with Dillon's said demand the latter on the same day filed in the District Court of the United States for the Northern District of Florida a libel in admiralty against the ship in which he claimed \$125, the amount of wages alleged to have been earned when said demand was made and compliance with it refused.

The District Court rendered a judgment dismissing the libel.

3 'The case was brought to this court by appeal. In this court the action of the District Court in dismissing the libel was sought to be sustained on the ground that section 4 of the Act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea," (38 U. S. Statutes at Large, 1164), in so far as it provides "that this section shall apply to seamen on foreign vessels while in the harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement," is violative of the Constitution of the United States.

Whereupon, this court desiring the instruction of the Honorable the Supreme Court of the United States for the proper decision of the questions arising in this case touching the constitutional validity of the above-mentioned statutory provision, it is hereby ordered that the following questions and propositions be certified to the Supreme Court of the United States of America in accordance with the provision of section 239 of the Judicial Code, to-wit:

First. Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; 4 and to promote safety at sea," violative of the Constitution of the United States?

Second. Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?"

For information as to the facts of the case copies of the transcript and briefs are herewith transmitted.

Witness our hands this 30th day of January, 1918.

(Signed)

R. W. WALKER,

Circuit Judge.

(Signed)

R. L. BATTS,

Circuit Judge.

(Signed)

BEVERLY D. EVANS,

District Judge.

5 UNITED STATES OF AMERICA,
Fifth Judicial Circuit, ss:

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of John Dillon, Appellant, versus Strathearn Steamship Company, Claimant of Steamship "Strathearn", appellee, was duly filed February 4th, 1918, and entered of record in my office by order of said Court, and, as directed by said Court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of New Orleans, Louisiana, this 4th day of February, A. D. 1918.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
*Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.*

5½ [Endorsed:] No. 3140. United States Circuit Court of Appeals for the Fifth Circuit. John Dillon, Appellant, vs. Strathearn Steamship Company, Claimant of S/S "Strathearn", Appellee. Statement of the case and questions certified to the Supreme Court of the United States.

Endorsed on cover: File No. 26,335. U. S. Circuit Court Appeals, 5th Circuit. Term No. 868. John Dillon vs. Strathearn Steamship Company, Claimant of Steamship "Strathearn." (Certificate.) Filed February 15th, 1918. File No. 26,335.



MAR 18 1918

JAMES D. MAHER,
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1917.

JOHN DILLON,
Appellant,

against

STRATHEARN STEAMSHIP COMPANY, LTD., Claimant of the
Steamship "STRATHEARN",

Appellee.

No. [REDACTED]
October
Term,
1917.

361

NOW COMES the Strathearn Steamship Company, Ltd., claimant of the Steamship "Strathearn", the appellee above named by its counsel Ralph James M. Bullowa, and moves that this cause be advanced upon the docket of this court, and set down for hearing at an early date to be fixed by this court upon the following grounds:

1. This is a suit in admiralty by a seaman of the Steamship "Strathearn" to recover the amount of wages alleged to have been earned by him, and claimed by him to have become due and payable by virtue of the provisions of the Act of Congress (Section 4530 of United States Revised Statutes) known as the "Seamen's Act". The appellee defended on the ground that such act, if construed as claimed by libellant, was unconstitutional. By leave of court the British Vice-Consul at Pensacola, Florida, by direction of the British Ambassador, intervened as *amicus curiae* and sub-

mitted a brief upon the construction and constitutionality of the Act. The District Court rendered judgment dismissing the libel. The libellant appealed to the United States Circuit Court of Appeals for the Fifth Circuit, which after due consideration certified the following questions to this court:

First: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", violative of the Constitution of the United States?

Second: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?"

By leave of Court, a brief was submitted in the Circuit Court of Appeals by the British Vice-Consul as *amicus curiae*.

2. This cause involves important questions of moment to the entire shipping world.

3. Numerous cases have been and are now being brought throughout the United States based upon

the statute referred to in the questions certified to this court, the decisions of the various District Courts are not in harmony, and it is important that a decision of this court be had as to the constitutionality and construction of the Statute.

4. The legal questions involved in this cause have a direct bearing upon the shipping of the United States and of its allies in the present war, and it is to the public interest that these questions should be determined by this court as speedily as possible. Upon the construction of the Act contended for by the appellant, the soundness of which we challenge, foreign vessels, especially British, are being stripped of their crews in American ports and are greatly delayed pending the obtaining of new crews. This was expressly admitted by appellant's counsel in the Circuit Court of Appeals, and is, of course, the natural result of such construction of the statute. If that construction be found by the Court to be correct, we submit that the statute is not Constitutional.

5. The questions involved are of International importance, and are of especial concern to the British Government. Counsel for the British Embassy has been instructed to apply for leave to be heard as *amicus curiae* and to concur in this application to advance.

Dated, March 25th, 1918.

RALPH JAMES M. BULLOWA,
Counsel for Appellee.

Notice is hereby given that the foregoing motion will be presented to the Supreme Court of

the United States on Monday, the 25th day of March, 1918, at the opening of court on that day.

Dated, March 16th, 1918.

RALPH JAMES M. BULLOWA,
Counsel for Appellee.

Service of a copy of the foregoing motion and notice is hereby admitted.

March 16th, 1918.

Counsel for Appellant.

12

Office Supreme Court, U. S.
MAR 20 1918
JAMES D. MAHER,

No. 868361

Supreme Court of the United States,

OCTOBER TERM, 1917.

NO. 868.

JOHN DILLON,
Appellant,

v.s.

STRATHEARN STEAMSHIP COMPANY, LTD., CLAIMANT OF THE STEAMSHIP "STRATHEARN",
Appellee.

Now comes Frederic R. Coudert, Esq., counsel for the British Embassy in the United States of America, and moves for leave to intervene in the above entitled cause as *amicus curiae*, and as such *amicus curiae* to file a brief and be heard upon the argument thereof, and also to concur in the motion made or to be made herein by the appellee to advance this cause for hearing upon the docket of this Court; all upon the following grounds:—

1. Upon the hearing of this cause in the District Court of the United States for the Southern

District of Florida, the British Vice-Consul at Pensacola, by direction of the British Ambassador, intervened by leave of Court as *amicus curiae* and filed a brief by the undersigned as counsel, and in the Circuit Court of Appeals for the Fifth Circuit the said British Vice-Consul in like manner by leave of Court again intervened as *amicus curiae* and filed a further brief by the undersigned as counsel.

2. The questions involved in this cause and certified to this Court by the Circuit Court of Appeals are of vital importance to the British Government by reason of the large number of British merchant vessels that come into American ports and the great amount of commodities, munitions and men, essential to the prosecution of the war, transported upon such vessels. Upon the construction of the Act of Congress of March 4th, 1915, known as the Seamen's Act, contended for by the appellant, such vessels are in great danger of being stripped of their crews in American ports and delayed by the necessity of replacing seamen who are induced to leave by the opportunity thus afforded to collect one-half of their wages and then desert their vessels. In the brief submitted by the appellant in the Circuit Court of Appeals he admitted that the result of this construction was "the demanding by hundreds of seamen of one-half of the wages they shall have earned up to date of their arrival at ports of the United States", and that "it naturally follows that these seamen, having obtained one-half wages, desert their ships, taking with them what effects they can."

3. On behalf of the British authorities it was contended in the District Court and in the Circuit

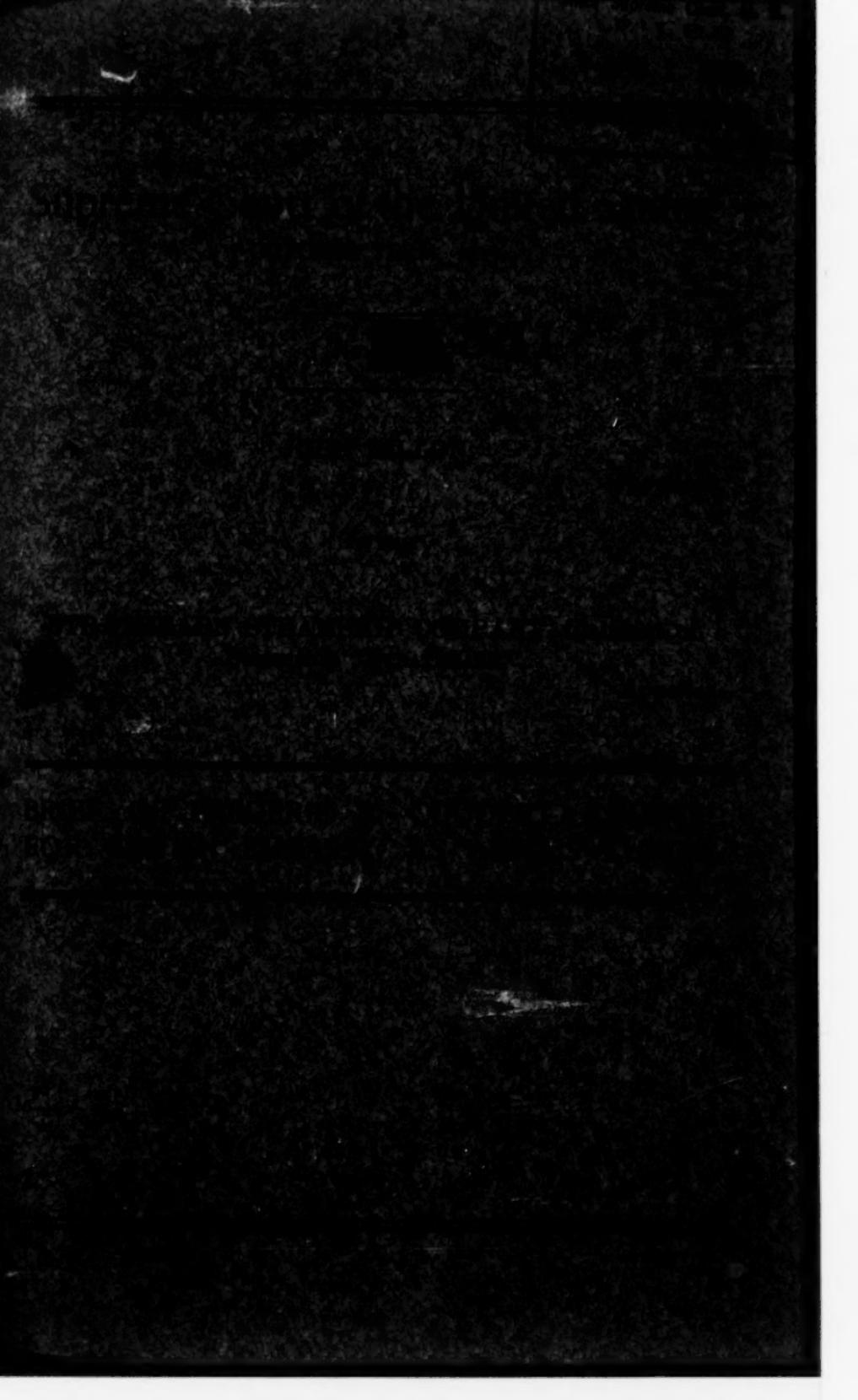
Court of Appeals that the Seamen's Act of March 4th, 1915, does not apply to foreign seamen shipped in a foreign port on a foreign vessel under an agreement, valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, and that if so construed as to be applicable to such a case the statute would exceed the legislative power of the United States and would violate the Constitution of the United States.

4. The construction of the statute contended for by the appellant has been followed by certain of the District Courts of the United States. The construction and constitutionality of the statute have not yet been determined by this Court. Every delay in the departure of a vessel, caused by the necessity of replacing deserting seamen, or by the institution of suit under the said provision of the Seamen's Act such as the case at bar, impedes the successful prosecution of the present war and thus injures the interests of the United States of America as well as of the British Government. Such delays frequently occur. It is thus of great importance both to this country and to the British Government that a decision of these questions by this Court should be had as speedily as possible.

Dated March 25th, 1918.

FREDERIC R. COUDERT,
Counsel for the British
Embassy in the United
States of America;
Amicus Curiae.
2 Rector Street, N. Y.





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Supreme Court of the United States,

OCTOBER TERM, 1917.

No. 868.

JOHN DILLON,
Appellant,

v.s.

STRATHEARN STEAMSHIP COMPANY, claimant of the Steamship Strathearn,

Appellee.

Brief of Frederic R. Coudert, Counsel for British Embassy, as Amicus Curiae.

STATEMENT OF FACTS.

This case comes before this Court on certification by the Circuit Court of Appeals for the Fifth Circuit of two questions of law, relating to the "Seamen's Act" of March 4th, 1915, commonly known as the "La Follette Act." These questions may be briefly stated as follows:

1. Is §4530 of the United States Revised Statutes, as amended by the "Seamen's Act", unconstitutional?
2. Is such section constitutional as applied to "seamen on foreign vessels while in harbors of the United States?"

For the information of this Court, the entire Record has been certified to it. Where the Record is referred to in this brief the paging of the Record in the Circuit Court of Appeals is intended.

The suit was brought in the District Court of the United States for the Northern District of Florida, and resulted in a dismissal of the libel (*The Strathearn*, 239 Fed. Rep. 583).

By direction of the British Ambassador, the British Vice-Consul at Pensacola, Florida, applied for and obtained leave to intervene in the District Court as *amicus curiae*, and submitted a brief in regard to the construction, application and effect of the provisions of the "Seamen's Act" invoked by the libellant. By like direction a similar application was made in the Circuit Court of Appeals, and by leave of court a brief was submitted on behalf of the British authorities.

The determination of the questions presented by this case is of vital importance both to this country and to the British Government by reason of the great number of British merchant vessels that come into American ports and the large proportion of American commerce that is carried in British bottoms. In the natural course of events the crews upon such vessels are, for the most part, shipped in British jurisdictions. It is essential to the interests both of American commerce and of the British Merchant Marine, and to the proper conduct of the war, that such vessels thus coming to American ports should be able to retain their crews for the homeward voyage, and that the transportation of commodities, munitions and men should not be interrupted and delayed by the necessity of replacing foreign seamen who leave their vessels in circumstances such as those shown in this case.

Under the present Seamen's Act the power to arrest deserting seamen by legal process has been abolished, the Act becoming effective in this regard as rapidly as existing treaties on the subject are abrogated. In this case the appellant seeks to secure a construction of the Seamen's Act which will take away the only remaining hold of British ship masters upon their seamen. The British authorities answer that if the Act is to be so construed it is unconstitutional.

The facts presented by this Record are these:

The libellant (a British subject) shipped as carpenter on the British Steamship *Strathearn* at Liverpool, England, on May 8th, 1916 (Rec. p. 19). At the time of signing the Shipping Articles he received an advance on account of his wages. By the Articles the libellant agreed to serve

"on a voyage not exceeding three years duration to any ports or places within the limits of seventy-five degrees North and sixty degrees South latitude, commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master" (Rec., p. 16).

The Articles contained no provision for payments on account of wages during the voyage, but on the contrary guarded against such payments by providing:

"No cash shall be advanced abroad or liberty granted other than at the pleasure of the Master" (Rec., p. 17).

The *Strathearn* sailed from Liverpool to Newport News, thence to South America, and from

South America to Pensacola, where she arrived on July 31st, 1916. This was the first port in the United States where she was to unload cargo. The vessel arrived in the evening and began to unload on the morning of the following day, August 1st, (Rec. pp. 22, 23.) The libellant left the ship without permission and went ashore. (Rec. p. 24.) On the evening of August 2nd, after being ashore, he returned and first demanded to be paid off and afterwards asked for half wages. Both requests being refused he again left the ship and filed the libel in this cause, demanding full wages.

The material portions of the statute under consideration are as follows:

"Sec. 4530. Every seaman on a vessel of
"the United States shall be entitled to re-
"ceive on demand from the master of the
"vessel to which he belongs one-half part of
"the wages which he shall have then earned at
"every port where such vessel, after the voy-
"age has been commenced, shall load or de-
"liver cargo before the voyage is ended and
"all stipulations in the contract to the con-
"trary shall be void: *Provided*, such a de-
"mand shall not be made before the expira-
"tion of, nor oftener than once in five days.
"Any failure on the part of the master to
"comply with this demand shall release the
"seaman from his contract and he shall be
"entitled to full payment of wages earned.
" * * * *And provided further*, that this
"section shall apply to seamen on foreign
"vessels while in harbors of the United
"States, and the courts of the United States
"shall be open to such seamen for its en-
"forcement."

The District Court held that the rights of the parties were to be determined by the foreign law to which they were subject, that the libellant's de-

mand was premature, and that the case did not come within the purview of the Seamen's Act.

In the Circuit Court of Appeals, the libellant-appellant contended that this construction was incorrect, that his demand was not premature, and that the American statute and not the law of the flag applied and governed the case. The claimant-appellee and the British authorities replied that if the statute were construed as claimed by appellant, it was unconstitutional. The Circuit Court of Appeals held the case under advisement for a time and then certified the constitutional questions to this Court.

Brief of the Argument.

On behalf of the British Government it is respectfully submitted:—

1. In order to determine the constitutionality of the statute, its construction must first be considered.
2. The statute should be so construed as not to apply to foreign seamen shipped in a foreign port on a foreign vessel under an agreement, valid where made, whereby such seamen are not entitled to payment of their wages until the completion of the voyage.
3. If so construed as to be applicable to the case at bar, the statute would exceed the legislative power of the United States.
4. If so construed as to be applicable to the case at bar the statute would violate the Constitution of the United States.
5. A decision by this Court is needed by reason of the conflicting decisions of the lower courts.

POINT I.

In order to determine the constitutionality of the statute, its construction must first be considered.

This cause is properly here by certification under §239 of the Judicial Code, and the entire Record is actually before this Court. The questions certified relate in terms only to the constitutionality of the statute, but implicit in every question of constitutionality is a preliminary question of construction, unless the language of the statute is so plain and unambiguous that only one construction is possible.

The procedure followed by this Court in such a situation was succinctly expressed by the Chief Justice in *Billings vs. United States*, 232 U. S. 261, at p. 279, as follows:

“To avoid if it may be the necessity of determining the constitutional question, we shall first decide what, if any, burden the statute imposes, and then if necessary consider its asserted repugnancy to the Constitution.”

See also *Towne vs. Eisner*, 245 U. S. 418, 425.

So in the case at bar, it must first be decided “what, if any, burden the statute imposes” upon “foreign vessels while in harbors of the United States,” and then whether the imposition of such burden violates the Constitution.

POINT II.

The statute should be so construed as not to apply to foreign seamen shipped in a foreign port on a foreign vessel under an agreement, valid where made, whereby such seamen are not entitled to payment of their wages until the completion of the voyage.

The statute does not apply in terms to *foreign* seamen, shipped in a *foreign* port on a foreign vessel, which thereafter comes into a harbor of the United States to load or deliver cargo. The provision under consideration reads:—

“This section shall apply to seamen on
“foreign vessels while in harbors of the
“United States.”

It is not expressly made applicable in this respect to *foreign* seamen and the purpose of the Act can be fulfilled without thus straining its language.

The title of the Act is:

“An Act to promote the welfare of *American* seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea.”

It is not an Act to promote the welfare of *foreign* seamen, or of seamen generally, but of *American* seamen, and it should not be extended by construction so as to apply to foreign seamen

in cases where such application would conflict with their existing contractual or statutory duties and obligations.

It is true that the title of an Act may not "be used to add to or take from the body of the statute," but it may and should "be considered in determining the intent of the legislature."

See *Holy Trinity Church vs. United States*, 143 U. S. 457, at p. 462.

See also *United States vs. Palmer*, 3 Wheat. 610, in which Chief Justice Marshall said, at p. 631:

"The words of the section are in terms of unlimited extent. The words 'any person' or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them. * * * The title of an Act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this Act is 'An act for the punishment of certain crimes against the United States'. It would seem that offences against the United States, not offences against the human race, were the crimes which the legislature intended by this law to punish."

So, in the statute under consideration, although the words "seamen on foreign vessels while in harbors of the United States" may be grammatically broad enough to include *all* seamen, foreign as well as American, yet the title of the Act clearly indicates that Congress had in mind American, not foreign, seamen, as the objects of its solici-

tude, and it is not to be supposed that Congress was unaware that its action must necessarily be "limited to cases within the jurisdiction" of the United States.

The case of *Patterson vs. Bark Eudora*, 190 U. S. 169, invoked below by the appellant, is not an authority to the contrary. There the Court considered a provision of the Seamen's Act then in force, making it unlawful to pay any seaman advance wages and providing "that this Section shall apply as well to foreign vessels as to vessels of the United States." It was contended that the statute was "beyond the power of Congress to enact, especially as applicable to foreign vessels." The Court took into consideration the fact that the title of the Act was "An act to amend the laws relating to American seamen", but held that the Act was applicable to seamen who had received an advance payment upon shipping on a foreign vessel in an *American* port.

In the *Eudora* case the libellants, who were seamen on board a British bark, sued upon the completion of the voyage for wages for the full term of service, ignoring an advance payment which they had received when they shipped at Portland, Maine. It appears from the Record that "one or more" of the libellants were American citizens and the nationality of the others is not stated. The Court held (p. 179) that it was within the power and was the intention of Congress

"to protect all sailors *shipping in our ports*
"• * • and that our Courts are bound to
"enforce those provisions in respect to for-
"eign equally with domestic vessels."

Where seamen ship in an American port, the contract is necessarily made within the territorial

jurisdiction of the United States. Within certain limits, the Government of the United States may lawfully regulate such contracts, and such regulations may be enforced in litigations arising under such contracts in the Courts of the United States. In such case the privileges of extraterritoriality usually afforded to foreign merchant vessels are deemed to have been withdrawn *pro tanto* by the sovereign power. But the United States has no power to regulate or abrogate contracts lawfully made between foreigners in their own country.

Upon the principles above indicated, the present Act should be construed as applicable only to seamen shipped in an American port on vessels which remain for a time in or afterwards return to an American port to load or deliver cargo. The ruling of the District Court, that the relations of the parties are governed by the law of England, is consistent with this construction.

There is another construction which was suggested in *Clyma vs. Steamship Ixion*, 237 Fed. Rep. 142, in a decision rendered on exceptions to the libel. There the Court held that since the libel showed

"that wages were *earned while in the port of Seattle*, demand made within the provisions of Section 4530 *supra* as amended, and payment refused, a cause of action is stated,"

and the exceptions to the libel were accordingly overruled. The case has not yet been decided on the merits.

This ruling merely decided that the Act might be applicable to wages actually earned by a for-

eign seaman on a foreign vessel while in an American port.

The construction of the statute thus indicated would at least limit its operation to wages actually earned within the territorial jurisdiction of the United States, although under a foreign flag, and would thus be less disruptive of foreign commerce than the construction urged by libellant in the case at bar. The decision of the District Court here, that in any event the libellant's demand was premature, is to this extent in line with the *Ixion* case.

Another construction which might be deemed open to consideration would be to make the statute applicable to seamen of American nationality upon foreign or domestic vessels, irrespective of the port of shipment. Seamen are regarded, to a certain extent, as "wards of the Admiralty" the world over, subject to certain disabilities and entitled to special protection. It might be contended that each nation may regulate these disabilities at its own will, and that such disabilities inhere in the personal capacity of each individual and go with him wherever he may be, as for certain purposes do the disabilities of infancy and coverture and certain disabilities affecting the validity of marriages.

Upon this theory a ship master, engaging an American seaman in a foreign port, would take him with constructive notice of potential disabilities which might become legally operative if he should thereafter be brought within the territorial jurisdiction of his own country. This construction would have some logical relation with the general body of international private law, but would be at variance with the well established rule followed by the District Court in the case at bar,

that a seaman, shipping under a foreign flag, is governed by the law of that flag.

See *The Magna Charta*, Fed. Cas. #8953,
2 Lowell 136.

The Egyptian Monarch, 36 Fed. Rep. 773.

Wilson vs. The John Ritson, 35 Fed. Rep.
662.

The Belvidere, 90 Fed. Rep. 106.

The Ucayali, 164 Fed. Rep., 897.

Rainey vs. N. Y. & P. S. S. Co., 216 Fed.
Rep. 454.

The Elswick Tower, 241 Fed. Rep. 706.

The facts in the case at bar do not present this particular situation.

The appellant has cited *London Assurance Co. vs. Companhia De Moagens*, 167 U. S. 149, in support of the proposition that the validity and interpretation of a contract are governed by the place of performance. There, however, the contract was to be wholly performed in England. It is inconceivable that the contract of a seaman, as expressed in his shipping articles, should be governed by a different law at every foreign port where the vessel may touch. The law of a contract cannot be thus kaleidoscopic or chameleon-like.

The appellant has also cited *Wildenhus's Case*, 120 U. S. 1. There the Court merely held that the local courts had jurisdiction over a *crime* committed on board a foreign vessel in an American port, disturbing the "public order" of the port, and hence within the express exception of the treaty invoked, which gave consular jurisdiction over the "internal discipline" of Belgian vessels, in matters not affecting "public order."

POINT III.

If so construed as to be applicable to the case at bar, the statute would exceed the legislative power of the United States.

The statute cannot be made applicable in such a way as to nullify valid contracts lawfully made between foreigners in a foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States. It is elementary that

"the laws of no nation can justly extend beyond its own territories except so far as regards its own citizens."

See *The Apollon*, 9 Wheat. 362, at p. 370,
per Story, J.

Also Moore's International Law Digest,
Vol. 2, §197, p. 213.

This is a general rule of international law based upon fundamental principles of jurisprudence, and is not confined to nations having a legislature created and circumscribed by a written constitution.

In the case at bar the libellant made in England a valid contract to serve for a voyage "not exceeding three years' duration, * * * and to end at such port in the United Kingdom as may be required by the Master." By the express statutes and the general law of the place where the contract was made, and of the nationality to which the vessel and the libellant belonged, this contract bound the libellant to serve out the entire period of employment under penalty of for-

feiture of his wages. The British statute on the subject (Merchant Shipping Act of 1894) is quoted in the claimant's answer and is in its essential portions as follows:

§221. If a seaman lawfully engaged * * * deserts from his ship he shall be guilty of the offence of desertion and is liable to forfeit all * * * of the wages which he has earned." (Rec., p. 13).

This British statute is declaratory of the general maritime law of nations, as shown by many authorities, among which special reference may be made to the following:

Abbott on Merchant Ships & Seamen, 14th Ed., p. 209.

The Bulmer, 1 Hag. Adm. 163.

Button v. Thompson, L. R. 4 C. P. 330.

The Baltic Merchants, 1 Edw. Adm. 86.

It has always been recognized in this country heretofore that where a seaman contracted to serve during a certain voyage he must, in order to recover wages, allege and prove that he had fully performed his contract, or that he had been prevented from doing so by some circumstance amounting to a legal excuse.

See *Wilcox v. Palmer*, 29 Fed. Cas. #17638.

The Leiderhorn, 99 Fed. Rep. 1001.

It is also the general rule of the common law that any contract of employment for a definite period is an *entire* contract and must be fully performed to entitle the employee to recover.

See 26 Cyc., pp. 1041, 1042 and cases cited.

The provisions of the Act under consideration are in derogation of the general rules of common law as long understood and applied in this country as well as in England and are based upon the theory that seamen are a special class requiring peculiar protection and therefore to be deprived within certain limits of the power of free contract. The Act should accordingly be strictly construed, and not extended by construction to matters or persons not within the legislative jurisdiction of the United States.

A limited construction was placed upon the former "Seamen's Act" in a very well considered decision of the late Addison Brown, well known as an Admiralty Judge, in the United States District Court for the Southern District of New York, in 1884.

See *The State of Maine*, 22 Fed. Rep. 734.

Here the Act discussed in the *Eudora* case, *supra*, forbidding the payment of advance wages, was sought to be applied to a case where the seamen had shipped in a foreign port upon an American ship. The Court held that the statute did not apply, although its language was

"doubtless broad enough to embrace the shipment of seamen in foreign ports, as well as in ports of the United States."

The Court also said:

"Statutes have no extra territorial force. "The shipment of seamen in a foreign port, "and the payment either of advance wages or "of bills previously incurred, as in this case, "as an advance of wages, are acts done and "completed wholly upon foreign soil; and "therefore wholly beyond the jurisdiction of

"this country. If American vessels be treated "as a part of the territory of the United "States, and within its jurisdiction, though in "foreign ports, still, acts like the present, "that are not done upon shipboard, but, as I "have said, are completed upon land prior to "the seamen's coming aboard and as a means "of procuring them to do so, would not be "done within the territorial jurisdiction of "this country. Every presumption is against "the supposition that Congress had any in- "tention to legislate in reference to acts done "and completed wholly beyond its jurisdic- "tion. And while Congress might, perhaps, "subject the Masters of American vessels, "upon their return to this country, to punish- "ment for acts done upon foreign soil, "though such acts were lawful there, still "such an intention would not be presumed. "Nor is such an intention sufficiently indi- "cated by mere general language, that can "be fully satisfied by its application to all "such acts committed within the territorial "jurisdiction of the United States. The in- "tention to include acts done on foreign ter- "ritory would only be inferred from some "specific provisions, showing an indisputable "intention to make the statute applicable to "acts committed beyond our territorial juris- "diction. The provisions of this statute are "not of that specific character."

See also *The Kestor*, 110 Fed. Rep. 432,
444.

In re Ross, 140 U. S. 453.

In two very recent decisions by the Circuit Court of Appeals, not yet reported, the same limitation has been placed upon the provisions of the present Act in regard to the payment of advance wages, and *The State of Maine* has been expressly approved and followed.

In McDonald *vs.* Sandberg, (*The Talus*), C. C. A., 5th Circuit, January 25, 1918, the Court held:

"We think the reasonable construction of
 "the Section is that it covers only such ad-
 "vances as it was within the competency of
 "Congress to criminally ~~publish~~^{punish} the making
 "of, viz: advances made within the territori-
 "al waters and jurisdiction of the country
 "by whomever and to whomever paid. This
 "gives the Section a legitimate field of opera-
 "tion. It was the purpose of Congress to
 "protect American seamen, as far as it had
 "jurisdiction to act. In doing so, in order
 "to avoid discrimination against American
 "ships, it was necessary to include foreign
 "vessels and sailors under like circum-
 "stance. There was, however, no policy to
 "be subserved in the interest of foreign sail-
 "ors, so far as the title to the Act shows,
 "and the debate upon it in Congress.
 * * * * *

"The provisions of the Section, when so
 "construed, are broad enough to fully pro-
 "tect American sailors in American ports,
 "and possibly in foreign ports, and it was
 "not essential to the end in view to include
 "advances to foreign sailors on foreign ships
 "in foreign ports. The debates in the Sen-
 "ate show no wider purpose to have been
 "in the purview of the legislators. The
 "abrogation of existing treaties was neces-
 "sary, though the scope of the Act was con-
 "fined to advances made in American ports,
 "both for the purpose of transferring wage
 "disputes on foreign vessels to the courts of
 "the United States from the consular courts
 "of the treaty nations, as provided for in
 "Section 4 of the Act, and to enable the pro-
 "visions of the law with regard to arrests
 "for desertion to be executed, without con-
 "flicting with existing treaties. Provisions

"in the Act to that end do not support appellees' contention.

"It is further contended that, though the statute is not itself applicable to advances made in foreign ports to foreign seamen by foreign ships, it outlines a policy against the making of such advances anywhere, and that pursuing that policy, the courts of the United States will not recognize such advances. The case of Arden Lumber Company *vs.* Henderson Iron Works, 83 Ark. 240, is cited by appellees in support of this contention. The policy of the United States respecting advances to seamen is only exhibited by the Section of the act in question and the corresponding sections of its predecessors, and in all these acts, as we construe them, this policy was confined to advances made to American seamen and to foreign seamen, only while in American ports. No policy against the making of advances to foreign seamen in foreign ports by foreign ships, where the law of the country permits it, can be deduced from them; nor do the debates in Congress upon the La Follette Bill show a wider purpose than the protection of American seamen against advances, the inclusion of foreign ships and seamen being incidental only and to avoid discrimination against American ships. The usual rule is that where a contract involves no moral turpitude, but is *malum prohibitum* only, if it is valid where made, it will be held valid in the courts of the United States elsewhere than where it was made, when rights are predicated upon it, though it would be invalid if made there. *Ward v. Vosburgh*, 31 Fed. 12; *Lehman v. Felf*, 37 Fed. 852; *Wilhite v. Houston*, 200 Fed. 390; *Berry v. Chase*, 146 Fed. 625."

Again, in *Hardy vs. Barkentine Windrush* and *Neilson vs. Sailing Ship Rhine*, C. C. A., 2nd Circuit, February 14, 1918, the Court, considering the same question, held:

"The absurdity of considering the ship
"captains indictable is not denied; therefore
"the contention becomes this, that this ex-
"ecuted contract must be set aside, because
"the statute in effect declares it repugnant
"to the 'policy and morality' of the people
"of the United States.

"We discover no consensus on this point of
"morals in the written law, there is no evi-
"dence on the subject, and the rule appealed
"to ordinarily affects only executory con-
"tracts. The situation here is this, libellants
"demand a part of their wages in accordance
"with the law of the United States; respond-
"ent's answer,—we paid you that part in
"Argentine in accordance with the law of
"that country; libellant's reply the law of the
"United States refuses to recognize that law-
"ful and completed transaction. For so ex-
"treme a doctrine support can be found only
"in plain unquestioned legislative order; and
"such order cannot be discovered in this
"statute."

In the present Act Congress does not undertake to require compliance with the provision in question, in the case of foreign seamen on foreign vessels, as a condition of the entry of such foreign vessels into American ports or their clearance therefrom, so that it is not necessary to consider what would be the effect of so extraordinary a departure from the usual course of international comity.

The construction here contended for by the British authorities, namely, that the Act does not

apply to wages earned by a foreign seaman shipped in a foreign port on a foreign vessel under an express contract for payment only upon completion of the entire voyage is not in any way inconsistent with the language of the Act and is in accord with its purpose as expressed in its title and with the general current of authority.

POINT IV.

If so construed as to be applicable to the case at bar the statute would violate the Constitution of the United States.

If the Act should be construed as contended for by appellant, it would be in conflict with the Constitution of the United States. By constraining the owners of the *Strathearn* to the payment of moneys contrary to the provisions of an express contract valid where made and of the statutes in force at that time and place, it would deprive them of property without due process of law.

If the Act of Congress in question were the Act of a State Legislature it would manifestly be unconstitutional as one "impairing the obligation of contracts" under U. S. Const., Art. 1, § 10. This Constitutional prohibition applies specifically to legislation by the States of the Union and is not in terms applicable to the United States. This Court has held, however, in *The Sinking Fund Cases*, 99 U. S. 700, at p. 718, that although the United States

"are not included within the constitutional
"prohibition which prevents States from
"passing laws impairing the obligation of
"contracts, but equally with the States they
"are prohibited from depriving persons or
"corporations of property without due proc-
"ess of law."

It may be that it is within the power of Congress to pass laws impairing the obligation of contracts to the extent of taking away some of the remedies formerly available for their enforcement. In the present legislation this has been done to a certain degree by abolishing the arrest of seamen for desertion and providing for the abrogation of Treaty stipulations for the use of this remedy by foreign ship-masters. It is also possible that this legislation would be effectual to prevent a suit for damages for breach of contract against a seaman who leaves a foreign ship in an American port after a demand for half his wages and refusal of payment.

Upon the construction contended for by libellant, Congress has not merely *taken away a remedy*, but has attempted to *create an enforceable pecuniary liability* in direct contravention of a contract lawful and valid where made, and to release one of the parties from his contract. This violates the constitutional prohibition against the deprivation of "property without due process of law" (U. S. Const., Amendment V). *As well might Congress undertake to impose a fine upon a foreign vessel for an act done wholly within a foreign jurisdiction and there recognized as lawful.*

This principle has been very recently expressed by this Court in *United States v. Freeman*, 239 U. S. 117. This was a prosecution for violation of § 240 of the Criminal Code, forbidding the

shipment from any foreign country into any State of intoxicating liquors not properly labelled. The Court held that shipment meant transportation from one locality into another and was

"essentially a continuing act whose performance is begun when the package is delivered to the carrier and is completed when it reaches its destination;"

and that

"all will concede that Congress did not intend to do anything so obviously futile as to pronounce as criminal an act wholly done in a foreign country, such as the delivery to the carrier where the shipment is from a foreign country into a State."

In like manner it would be "obviously futile" for Congress to attempt to declare illegal a civil contract, made outside of the jurisdiction of the United States by persons owing no allegiance to the United States, and valid where made.

In the case at bar, the contract of employment for an entire voyage being valid where made, and being beyond the power of Congress to abrogate or affect, is a complete defense to this suit. In addition, there has been a forfeiture by desertion, which not only bars this suit, but any suit based upon the original employment.

A "vested right to an existing defence" is property, and hence within the constitutional protection.

See *Pritchard vs. Norton*, 106 U. S. 124, at p. 132.

Legislation which attempts to take away a vested right under a contract not only impairs

the obligation of the contract but is also equivalent to a deprivation of property.

See *Houston & Texas Central Railway vs. Texas*, 170 U. S. 243, 261;
Angle vs. Chicago, St. Paul &c. R. Co., 151
U. S. 1, 19.

The consequences of adopting the unconstitutional construction of the statute sought by libellant would be disastrous. A seaman who is able to collect half his wages under threat of terminating his contract and collecting all by legal process, if his demand for half is not complied with, may easily be tempted, by various easily imaginable considerations, to take half his pay, and then desert his ship and let the other half go, whereas, if confronted with the forfeiture of his wages in full, he would doubtless prefer to complete his term of employment.

Appellant's counsel admitted in his brief in the Circuit Court of Appeals that the construction of the Act which he advocates causes "hundreds of seamen" to demand and get half their pay, and "then desert their ships, taking with them what effects they can."

The Courts of this country should protect the merchant vessels of an allied foreign government against being thus stripped of their crews in American ports and delayed indefinitely while new crews are sought. The express purpose of the Act is to promote the welfare of *American* seamen. Other nations should be allowed to promote the welfare of their own seamen and shipping in such manner as they see fit, so long as their methods do not interfere with the peace and

order of American ports. Moreover, under the proper and constitutional construction of the statute here advocated, the peace and order of American ports will not be endangered by the presence of numbers of deserting seamen, not liable to arrest for such desertion, and difficult to deal with effectually under the American Immigration Laws.

The Act should be given a construction in accordance with the spirit of the United States Constitution and of general international law, and within the proper sphere and jurisdiction of Congress.

It is elementary that where a statute may be so construed as not to contravene the Constitution, such construction should be adopted.

"In the case of all acts of Congress, such interpretation ought to be adopted as, without doing violence to the import of the words used, will bring them into harmony with the Constitution."

The Japanese Immigrant Case, 189 U. S. 86, 101.

"No canon of construction is better established or more universally observed than this, that if a statute will bear two constructions, one within and the other beyond the constitutional power of the law-making body, the courts should adopt that which is consistent with the Constitution, because it is to be presumed that the legislature intended to act within the scope of its authority."

St. Louis S. W. Ry. vs. Arkansas, 235 U. S. 350, 369.

POINT V.

A decision by this Court is needed by reason of the conflicting decisions of the lower Courts.

So far as the precise question here presented is concerned, the Act has not yet been construed by the Circuit Court of Appeals or by this Court, and the decisions of the lower Courts are conflicting.

The reported decisions are as follows:

The Jacob N. Haskell, 235 Fed. Rep. 914, D. C., N. D. Fla., June 21, 1916, Shepard, D. J.

This dealt with the rights of *American* seamen on a vessel of the United States, and held that such seamen are entitled to payments in port at intervals of five days, but that the Master might at all times retain, to the credit of a seaman, "a sum equal to that which has been paid to him out of the wages earned until the end of the voyage."

In re Ivertsen, 237 Fed. Rep. 498, D. C., N. D. Cal. 2d Div., Sept. 18, 1916, Van Fleet, D. J.

Here the question actually decided was that where a seaman demanded full payment and discharge, without any preliminary demand of one-half, and left the ship on refusal, he became a deserter and forfeited his wages. There was a *dictum*, unnecessary to the decision of the case, and apparently erroneous, that "one-half of the

wages then earned," means one-half of the balance then unpaid.

Clymer vs. The S. S. Ixion, 237 Fed. Rep. 142, D. C. W. D. Wash., July 15, 1916.
See *ante*, p. 10.

The London, 238 Fed. Rep. 645, D. C., E. D. Penn., Jan. 9, 1917, Dickinson, D. J., affirmed 241 Fed. 863; C. C. A. 3d Circuit, April 26, 1917.

This laid down the correct rule on the question above mentioned, namely, that the seaman's right is to one-half of the total wages earned, after deducting from such one-half the amount of partial payments already made. In this respect the Court followed the same rule as that set forth in *The Jacob N. Haskell, supra*. Since the libel there involved was dismissed, this case does not adjudicate upon the constitutionality of the Act. The opinion in the Circuit Court of Appeals deals only with the question of computation.

The Strathearn, 239 Fed. Rep. 583, D. C., N. D. Fla., Jany. 2, 1917. Sheppard, D. J.

This was the case at bar in the District Court.

The Imberhorne, 240 Fed. Rep. 830, S. D. Ala., S. Div. Ervin, D. J.

This case held that advances made to seamen in a foreign port, and there lawful, could not be deducted in computing the "one-half of the wages then earned" which might be demandable.

This ruling is contrary to the decision in *The State of Maine*, 22 Fed. 734, *supra*, and to the two

unreported Circuit Court of Appeals decisions quoted *supra* (pp. 17-19), is not required by anything in the language of the statute, ignores the principle that such a prohibition as that against advance payments cannot operate extra-territorially upon foreign nationals, and is thus manifestly incorrect.

It does not appear from the opinion that in the *Imberhorne* case the question of the general application of the Seamen's Act to foreign seamen on foreign vessels was fully presented.

The Meteor, 241 Fed. Rep. 735, D. C. S. D.
Ala., May 1, 1917. Ervin, D. J.

The Clematis, 244 Fed. Rep. 484, D. C., E.
D. N. Y., Aug. 1, 1917. Chatfield, D. J.

These follow *The London* on the question of the manner of computation.

The Talus, 242 Fed. Rep. 954, D. C. S. D.
Ala., May 26, 1917. Ervin, D. J.

The Delagoa, 244 Fed. Rep. 835, D. C., E. D.
N. Y., Aug. 1, 1917. Chatfield, D. J.

The Rhine, 224 Fed. Rep. 833, D. C. E. D.
N. Y., May 25, 1917. Veeder, D. J.
(In this last case the vessel was American).

These refuse to apply the law of the flag and hold that advances in a foreign port are not to be considered in making up the computation. The nationality of the seamen does not appear from the reports. "*The Talus*" and "*The Rhine*" have both been reversed (see pp. 17, 19, *supra*).

The Belgier, 246 Fed. Rep. 966, D. C., S. D.
N. Y., July 13, 1917, A. N. Hand, D. J.

This case held that advances in a foreign port, lawful where made, should be deducted, and that a demand for half wages might be a mere cover for intentional desertion, which would bar recovery.

The questions here presented are entirely open in this Court. The correct pathway was indicated by the District Court when it pointed out that a foreign contract is governed by foreign law, and by the Circuit Court of Appeals in the two unreported cases cited. This Court is asked to follow this path a step further and to declare that the right to demand half wages and terminate the contract on refusal cannot be invoked by a foreign seaman shipped on a foreign vessel in a foreign port, so as to nullify the seaman's contractual obligations and statutory duties, to cripple the merchant marine of one of our Allies, and to impede the prosecution of the war and give aid and comfort to the enemy by interfering with the vital needs of ocean transportation.

Conclusion.

The Court should answer the certified questions by declaring that the Act in question is unconstitutional unless so construed as not to apply to foreign seamen shipped on a foreign vessel in a foreign port, under a contract, valid where made, pro-

viding for payment of wages only upon the completion of the voyage.

Respectfully submitted this 25th day of March, 1918.

FREDERIC R. COUDERT,
Counsel for British Embassy in
the United States of America,
Amicus Curiae.

HOWARD THAYER KINGSBURY,
also of Counsel,
2 Rector St., N. Y.

-14-

MAR 19 1918

JAMES D. MAHER,
DELIVER.

Supreme Court of the United States

OCTOBER TERM, 1917.

JOHN DILLON,

Appellant-Petitioner,

against

STRATHEARN STEAMSHIP COMPANY, claimant of the
Steamship Strathearn,

Appellee-Respondent.

MOTION FOR PREFERENCE.

SILAS B. AXTELL and
W. J. WAUGESPACK,
Attorneys for Petitioner.



Supreme Court of the United States

OCTOBER TERM—1917.

JOHN DILLON,
Appellant-Petitioner,
against
STRATHEARN STEAMSHIP COMPANY, claimant of the Steamship *Strathearn*,
Appellee-Respondent.

Docket #868.

Sirs:

PLEASE TAKE NOTICE that on Monday the 25 day March, 1918, at the opening of court on that day or as soon thereafter as counsel can be heard, I shall make a motion on the annexed petitions, before the Supreme Court of the United States, that the above entitled cause be advanced and preferred for a hearing at an early date convenient to the court, and I shall then and there ask the court to grant the petitioner such other and further relief in the premises as may be just.

Dated, New York, March 18, 1918.

Yours, etc.,

AND

Attorneys for Petitioner.

32 Broadway,
New York City.

To:

2 Rector Street,
New York City,
Specially appearing on behalf of the
British Vice-Consul at Pensacola,
aⁿ amicus curiae.

Pensacola, Fla.,
Attorneys for the Strathearn S. S. Co.,
claimants of the S. S. *Strathearn*.

Now comes the appellant, John Dillon, by his counsel, Silas Blake Axtell, and moves that the cause be advanced upon the docket of this court, so that it may be heard at an early date.

This is an action for wages and an appeal from a decision of Judge Sheppard, District Judge, in *The Strathearn*, reported 239 F., 585.

Facts.

The libelant, a British subject, shipped at Liverpool, England, on May 8th, 1916, as a carpenter on the *Strathearn*, a British ship, owned by the Strathearn Steamship Company, a corporation organized under the laws of Great Britain. The wages were nine pounds per calendar month, payable at the termination of the voyage.

By the articles, the libelant agreed to serve

"on a voyage not exceeding three years duration to any ports or places within the limits of seventy-five degrees North and sixty degrees South latitude, commencing at Liverpool—proceeding thence to Newport News, and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom as may may be required by the master."

The *Strathearn* sailed from Liverpool to Newport News, thence to South America, and from South America to Pensacola, where she arrived on July 31st, 1916, at 5 o'clock P. M., loaded with a cargo. She started to discharge her cargo at 7 o'clock A. M., August 1st, libelant being then on board and working.

On the next day libelant left the ship to consult the British consul and on his return he demanded of the master half wages under the Provisions of Section 4530 of the United States Revised Statute as amended by Act of March 4th, 1915. The master refused to comply with his demand, whereupon he left the vessel and filed this libel in which he demands full wages.

As amended, Section 4530 R. S. reads as follows:

“Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessels, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: Provided, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled TO FULL PAYMENT OF WAGES EARNED—AND PROVIDED FURTHER, THAT THIS ACTION SHALL APPLY TO SEAMEN ON FOREIGN VESSELS WHILE IN HARBORS OF THE UNITED STATES, AND THE COURTS OF THE UNITED STATES SHALL BE OPEN TO SUCH SEAMEN FOR ITS ENFORCEMENT.”

The claimant defended before the Circuit Court of the United States on the three principal grounds:

- 1st. That the libelant demanded his wages prematurely.
- 2nd. That the statute was not intended to apply to foreign seamen.

3rd. That if construed, as appellant contends, the statute violates the due process clause of the Constitution of the United States.

This case was argued before the Circuit Court of Appeals, on December 4, 1917, and subsequently the Circuit Court of Appeals, without deciding the first two questions raised, has certified to this court two questions involving the constitutionality of the act.

They are as follows:

1st. Is Section 4530 of the Revised Statute of the United States, as the same was amended by Section 4 of the Act of Congress, approved March 4th, 1915, entitled an act to promote the welfare of American seamen in the merchant marine of the United States, to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of the treaty provisions in relation thereto and to promote safety at sea, violative of the Constitution of the United States?

2nd. Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last mentioned Act of Congress, approved March 4th, 1915, violative of the Constitution of the United States insofar as it provides "that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open for its enforcement"?

The papers of this case and the questions, I am informed, have been duly filed with the Clerk of the Court, and the case is now on the docket of this court for October, 1918, as case No. 868.

John Dillon, the petitioner, by his attorney, your deponent, prays that a preference be granted to

him, and that this action be advanced to the summary calendar of this court.

Petitioner's application is based on the following grounds:

1st. YOUR PETITIONER IS A WAGE EARNER, AND THIS IS AN ACTION TO RECOVER WAGES.

2nd. BECAUSE THE RIGHTS OF MANY THOUSANDS OF OTHER SEAMEN AND WAGE EARNERS, BOTH ON AMERICAN AND FOREIGN SHIPS, ARE IN DOUBT UNTIL THE QUESTIONS HERE CERTIFIED ARE DECIDED.

3rd. Because the right of Congress, as the law making body of the United States, to prescribe conditions of trade under which foreign vessels can enter ports of the United States in times of peace for purposes of trade is questioned.

It is submitted that the determination of the last proposition named is one of vital importance to the people of the United States.

That American ship owners have found it impossible to build and navigate vessels at a profit in competition with vessels operated under foreign flags, is a matter of common knowledge.

America has been and is a high wage country due to various causes—England, Norway, Sweden, Holland and Germany, have been low wage countries by comparison. Vessels under the flags of any of those countries engaging crews in their own ports by reason of treaty provisions heretofore existing, have been able to keep their crews on board from the beginning to the end of the voyage. Deserting seamen were arrested and put back on board by our

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own police, so that foreign vessels could be operated more cheaply than could American vessels.

Section 4530 originally provided that seamen on American vessels could demand and receive "one-third of the wages due" them, and in 1898, the act was amended to read "one-half the wages due." But as the articles of foreign ship owners provided that wages of the crew should not be paid during the voyage, except at the option of the master, Congress, in order not to place American ship owners at a disadvantage, inserted in the amendment of 1898 this—"unless the contrary be expressly stipulated in the contract." The ship owners usually saw to it that it was so stipulated.

By amending Section 4530 in 1915, Congress determined to equalize wages on *American and foreign ships engaged in American trade*, by changing the statute to read: "One-half the wages earned," and providing that it should apply to seamen on foreign vessels. The evident intention was to benefit the seamen, but not at the same time to put the American ship owner at a disadvantage—that the experiment has been beneficial to American shipping cannot be doubted.

Now the owners of British ships come into court and allege that the act as to them is unconstitutional because it takes *property without due process*. Obviously the same answer must be given to both questions here certified, if the act is unconstitutional as to foreign vessels, it must likewise be unconstitutional as to domestic ships.

The United States does not recognize property in contracts that are contrary to the declared public policy of this country. Can it be questioned that the contracts here relied on are contrary to the Seamen's Act in this case? The contract provided that

Dillon got no wages until the end of the voyage in England—the Seamen's Act provides that he receive half wages on demand, provided the demand is not made until five days after the commencement of the voyage, and at a loading or discharging port in America. Can it be questioned that the Seamen's Act by Section 4530 creating this right, and by the abrogation of treaties relating to arrest or desertion, determines the public policy of the United States as to these contracts?

The power of Congress to regulate foreign and domestic ships engaged in American trade is questioned. This involves the well established right of the United States to create and maintain a protective tariff—to prevent foreign ships from engaging in coastwise trade, and all sorts of regulations made and enforced for the health and benefit of the people of the United States—quarantine regulations, immigration regulations, etc. (See *The Wildenhuss*, 120 U. S., 1; *The Eudora*, 190 U. S., 172.)

It is urged by the claimant that Section 4530 interferes with the performance of a contract entered into abroad in good faith, which was lawful *where made*.

If this proposition were sustained then any regulation to protect American commerce or the health and morals of the people of the United States, could be set at naught by simply making a contract in a country where such contract *was lawful!* For these reasons a speedy determination to these questions is desirable.

4th. Because these questions INVOLVE A STATUTE OF THE UNITED STATES WHICH IS PART OF A HIGHLY REMEDIAL ACT OF CONGRESS INTENDED TO BENEFIT A

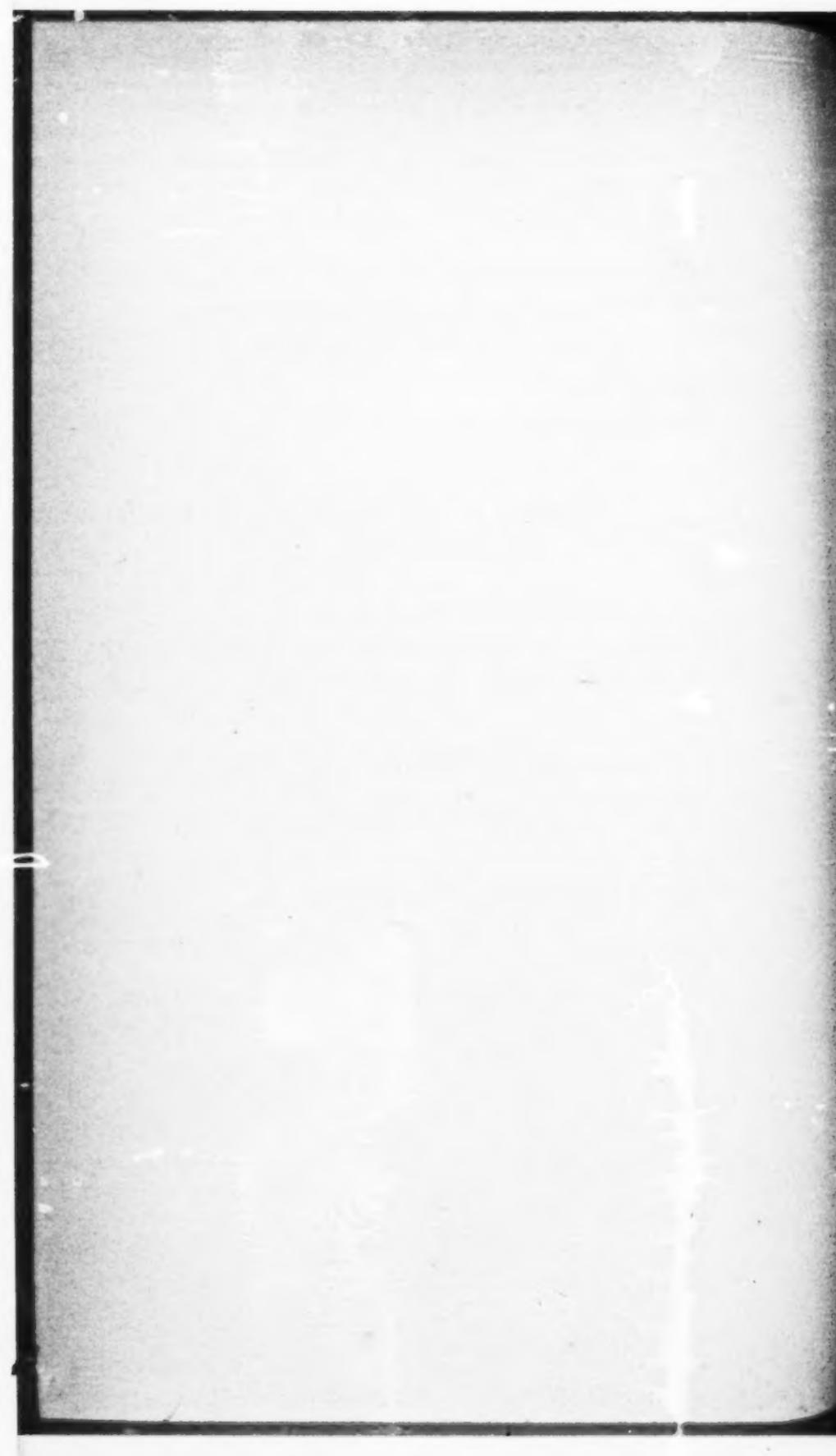
CLASS OF LABORERS WHO HAVE LONG
BEEN REGARDED AS WARDS OF THE
COURTS.

WHEREFORE, deponent, on behalf of the petitioner, respectfully petitions this court to advance this case to the calendar of summary causes.

Dated, March 18, 1918.

Counsel for Appellant.

Counsel for Appellant.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. [REDACTED] **861**

JOHN DILLON

Appellant

**STRATHHEARN STEAMSHIP COMPANY, CLAIMANT
OF STEAMSHIP "STRATHHEARN."**

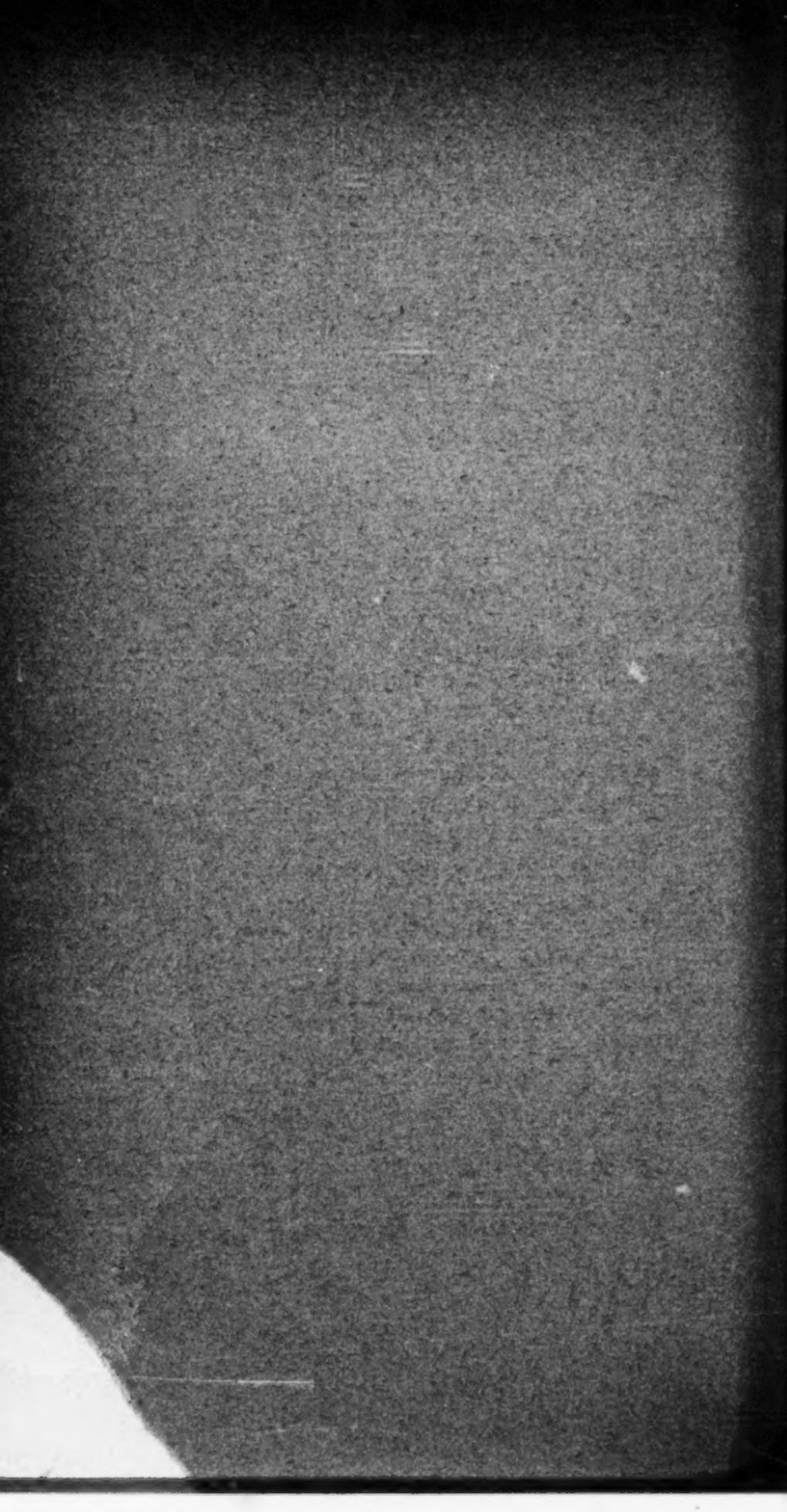
On a Certificate from the United States Circuit Court
of Appeals for the Fifth Circuit.

Brief on Behalf of John Dillon, Appellant.

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New Orleans, Sept. 10, 1918.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1917.

No. 868

JOHN DILLON

versus

STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF STEAMSHIP "STRATHEARN."

On a Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of John Dillon, Appellant.

The Court of Appeals for the Fifth Circuit has certified these two questions:

First: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by Section 4 of the Act of Congress, approved March 4, 1915, entitled: "An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to

secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea violative of the Constitution of the United States?"

Second: Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned Act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides: "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the Courts of the United States shall be open to such seamen for its enforcement?"

As amended, Section 4530 of the Revised Statutes of the United States reads as follows:

"Section 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in Section forty-five hundred and twenty-nine of the Revised Statutes: Provided further, That notwith-

standing any release signed by any seaman under Section forty-five hundred and fifty-two of the Revised Statutes any Court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the Courts of the United States shall be open to such seamen for its enforcement."

38 Stat. L., 1165.

Section 18 of the Seamen's Act of 1915 fixed the date when the act shall take effect and reads as follows:

"Sec. 18. That this act shall take effect, as to all vessels of the United States, eight months after its passage, and as to foreign vessels twelve months after its passage, except that such parts hereof as are in conflict with articles of any treaty or convention with any foreign nation shall take effect as regards the vessels of such foreign nation on the expiration of the period fixed in the notice of abrogation of the said articles as provided in Section sixteen of this act."

38 Stat. L., 1185.

On March 31st, 1915, the Attorney General rendered an opinion on the proper construction of this section and reached the conclusion that it was intended that no part of the act should become effective legislation until November 4, 1915, as to United States vessels, and March 4, 1916, as to foreign vessels. *Suppl. Federal Statutes, 1916, p. 250.*

STATEMENT OF THE FACTS AND PLEADINGS.

The libellant, John Dillon, a British subject, shipped at Liverpool, England, on May 8th, 1916 as carpenter on the steamship "Strathearn" which was then and at the time of the filing of the libel of this case, a vessel of British registry and enrollment, owned by the Strathearn Steamship Company, Ltd., a corporation organized and existing under the laws of Great Britain. By the shipping articles signed by him, Dillon agreed to serve "on a voyage from or not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude, commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the master." Dillon's wages were fixed at £9 per calendar month payable at the termination of the voyage.

On that voyage the S. S. "Strathearn" sailed from Liverpool to Newport News, thence to a port in South America and from that port in South America to Pensacola, Florida, where she arrived on July 31st, 1916, loaded with a cargo. She started to discharge her cargo at 7 A. M. on August 1st, 1916, libellant being then on board and working.

On the next day, August 2nd, 1916, while the Strathearn was in the port of Pensacola, John Dillon, who was still in the employ of the ship as carpenter, demanded of the master of the ship one-half of the wages he had then earned. The master refused to comply with his demand and no payment was made thereof. Prior to the time of that demand

nothing had been paid to Dillon on his wages since the ship left a port in South America about two months before. At the time the demand was made the amount of wages earned by Dillon, less what had been paid him thereof, was approximately \$125.00, no part of which was due under the terms of the shipping articles signed by Dillon which provided that the wages were to be paid at the termination of the voyage.

After the master had refused to comply with Dillon's demand, the latter on the same day filed in the District Court of the United States, this libel in admiralty, against the ship in which he claimed \$125.00, the amount of wages alleged to have been earned when the said demand was made and payment refused.

The Strathearn Steamship Company defended, substantially upon the following grounds:

1st. That the Congress of the United States had no jurisdiction and no constitutional right to make laws governing the situation, or in substance that Section 4530 is unconstitutional.

2nd. That libellant demanded his wages prematurely and that the right to demand half wages under the provisions of the act does not arise until five days after the arrival of the vessel and that libellant was, therefore, a deserter and had, under the laws of Great Britain, forfeited his wages.

3rd. That libellant's case does not fall within the provisions of the statute because the statute was not intended to apply to foreign seamen entering into a valid contract in a foreign port and for services on a foreign vessel.

4th. That if construed as appellant contends, the statute violates the due process clause of the Constitution of the United States.

The British Consul at Pensacola, Florida, intervened as *amicus curiae* by direction of the British Ambassador, and asked to be permitted to submit a brief in regard to the construction, application and effect of the provisions of Section 4530 of the Revised Statutes invoked by libellant.

The Court did not pass upon the constitutional point raised by defendant, but pretermitted that point the Court dismissed the libel upon the ground that libellant had made his demand for half wages prematurely, construing the statute to mean that the demand for half wages should be made five days after the arrival of the vessel in port and not five days after the commencement of the voyage and used the following language:

"Pretermitting the subject which evoked most of the argument, viz., whether the Seamen's Act would apply to a case where all of the parties to the action are foreigners and under a foreign flag, or the constitutionality of the act, it is certain that the statute applies only to cases embraced by its terms, and that such cases must meet the express requirements of the act to set the remedial provisions into operation."

From that judgment the libellant prosecuted an appeal to the Court of Appeals for the Fifth Circuit and in that Court the questions propounded by the pleadings and argued by counsel on both sides were:

1st. Whether the right granted to "every" seaman to demand half wages at "every" port where the vessel shall load or deliver cargo arises after the expiration of five days, from the commencement of the voyage or after the expiration of five days from the arrival of the vessel in port.

2nd. Whether, under the terms and the language or upon the proper construction of the statute, it does or does not apply to "foreign" seamen shipped in a "foreign" port upon a "foreign" vessel, under an agreement valid where made, whereby such seamen are entitled to payment of their wages until the termination of the voyage whenever such foreign vessels come into our ports to load and deliver cargo and while they remain in the ports of the United States.

3rd. Whether, if construed applicable to "foreign" seamen shipped in a "foreign" port on a "foreign" vessel under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the termination of the voyage, the statute does not exceed the legislative powers of the United States.

4th. Whether, if construed as applicable to the case at bar, the statute violates the constitutional prohibition against the deprivation of property without due process of law.

THE TWO QUESTIONS CERTIFIED.

Reasoning from the two questions certified to this Court, the conclusion is inevitable that the Court of Appeals was satisfied that:

I.

The right to demand half wages arises after the expiration of five days from the commencement of the voyage and not five days after the arrival of the vessel in port;

II.

That Section 4530, as amended by the statute in congressional intendment, in terms and by proper construction applies to foreign seamen shipped in a foreign port on a foreign vessel, under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the termination of the voyage, whenever such foreign vessels come into our ports to load or deliver cargo and while they remain in the harbors of the United States.

(We reproduce in an appendix the argument submitted in our brief filed in the Court of Appeals on the foregoing points.)

But the Court seems in doubt on these two points:

I.

Whether Congress is vested with the power to regulate the contracts of seamen engaged in interstate commerce so as to confer upon them the right to demand half of their wages in every port where such vessels shall load or deliver cargo, all stipulations in the contract to the contrary notwithstanding, and, upon failure on the part of the master to comply with this demand, to release the seamen from their contract and entitle them to file suit for the full amount of their wages then earned.

Whether, if Congress is vested with the power to so regulate the contracts of seamen, such power extends to the contracts of foreign seamen shipped in a foreign port on a foreign vessel under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the termination of the voyage whenever these foreign vessels come into our ports to load or deliver cargo and while in the harbors of the United States.

ARGUMENT.

FIRST QUESTION.

Is Section 4530 of the Revised Statutes of the United States as the same was amended by Section 4, of the Act of Congress, approved March 4, 1915, entitled: "An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea" violative of the Constitution of the United States?

This question is not very explicit but it is obvious that the distinct points or propositions of law which the Court wishes answered are these:

Whether the provisions of the statute regulating the contracts of seamen engaged in interstate and foreign

commerce by conferring upon them the right to demand half of their wages under certain conditions and by avoiding all stipulations to the contrary in their contracts and, upon the failure of the masters to pay, to terminate their contracts and sue for all of their wages then earned, is a valid exercise of the power of Congress to regulate commerce and whether it is not an invasion of the liberty of contract guaranteed by the Fourteenth Amendment of the Constitution.

We think these questions have been fully answered by this Court in the case of *Patterson v. The Eudora*, 190 U. S., 169, 23 S. C. Rep., 821, in which the Court said:

"Contracts with sailors for their services are, as we have seen, exceptional in their character, and may be subjected to special restrictions for the purpose of securing the full and safe carrying on of commerce on the water. Being so subject, whenever the contract is for employment in commerce, not wholly within the state, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of protecting foreign and interstate commerce."

But, over and above the power of Congress to regulate commerce, the power of Congress to make amendments of the maritime law of the country is co-extensive with that law, so that Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country.

Southern Pacific Co. v. Jensen, 37 S. C. Rep., 524; 244 U. S., 205; *Chelentis v. Luckenbach*, 38 S. C. Rep., 501; *In re Garnett*, 141 U. S., 12; *Butler v. Boston Steamship Co.*, 130 U. S., 527.

Nor is it an invasion of the liberty of contracts guaranteed by the Fourteenth Amendment, for, as was said by this Court in the case of *Patterson v. Eudora*, quoting *Frisbie v. U. S.*, 157 U. S., 160:

"While it may be conceded that generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessities of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that generally speaking, every citizen has a right freely to contract for the price of his labor, service, or property.

* * *

"If the necessities of the public justify the enforcement of a sailor's contract by exceptional means, justice requires that the rights of the sailor be in like

manner protected. The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs."

From the title of the act which is to "promote the welfare of American seamen in the merchant marine of the United States", from an analysis of all of its provisions, from its legislative history and the circumstances surrounding its enactment, as exhibited in the public documents, in the records of Congress and the reports of committees, and from a digest of all of said documents as prepared by Andrew Furuseth, President of the International Seamen's Union of America, to which we respectfully refer this Court, the manifest intent and purpose was the public welfare since it was to elevate and better the condition of the seamen, to cause wages to equalize upwards by means of the free operation of the law of supply and demand as to labor, to secure a higher standard or service and thus promote safety at sea and to benefit the American merchant marine by equalizing the costs of operation as between our ships and those of other nations.

Prior to the amendment of Section 4530, under terms of the Act of 1898, the American as well as the foreign ship owners could, as it is manifest, defeat the object of the provision of the statute with reference to the payment of half wages, by stipulations to the contrary in the contract, but, experience had taught that it was necessary to prohibit such stipulations, to strike them with nullity, in order to carry out the intent and purpose of the act, the public policy of the United States, and lift up the American seamen from a

condition of bondage unworthy of an American citizen and contrary to the spirit of our institutions.

Gibbons v. Ogden, 9 Wheaton, 1; *Champion v. Ames*, 188 U. S., 321; *Johnson v. Southern P. Co.*, 196 U. S., 1.

We do not think, therefore, that there can be any serious contention as to the constitutionality of the statute upon those two points, and we think the first question should be answered "yes."

SECOND QUESTION.

Is Section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned Act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides: "That this section shall apply to seamen on foreign vessels while in harbors of the United States and the Courts of the United States shall be open to such seamen for its enforcement?"

This question more specifically stated is:

In applying the statute to foreign seamen shipped in a foreign port on a foreign vessel under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, whenever such foreign vessels come into our ports to load or deliver cargo and while they remain in our ports, did Congress exceed the legislative power of the United States, and did it violate the constitutional prohibition against the deprivation of property without due process of law?

There is no pretension that Congress, by this statute, could nullify contracts with seamen entered into in a foreign country, which were to be performed wholly on foreign soil or in foreign harbors, but what Congress undertook to do, and did do, was to establish a public policy of the United States with regard to the payment of seamen's wages which was to be binding upon all foreign vessels, whenever they submitted themselves to the jurisdiction of the United States by entering into our ports to load and deliver cargo in foreign commerce and to provide for the enforcement of this public policy whenever an attempt was made to set it at defiance.

Congress has the undoubted legislative power to withdraw its consent to the entry of foreign vessels into the ports of the United States altogether. It can, therefore, impose upon foreign vessels such terms and conditions precedent to their entry as it sees fit. But, by this section of the Act of 1915, Congress has imposed upon every vessel entering our ports to load or deliver cargo, the condition that they shall do what every American vessel is made to do, viz.: pay to seamen upon their demand at stated intervals of time half of their wages then earned. The statute does not attempt to nullify such contracts where the vessels have complied with the public policy of this country by paying the half wages, for upon such compliance the contract remains otherwise in full force. It is only when foreign vessels have set the law and the public policy of the United States at defiance by refusing to pay the half wages, that, by their own infraction of the statute within our own harbors, upon American soil and within the jurisdiction of the United States,

the vessel themselves, under the terms of the statute, terminate the contract, vest the seamen with the right to demand all of their wages then earned and open to them the Courts of the United States for the enforcement of this right, since the seamen themselves are, under the terms of the statute, powerless to terminate the contract and enforce a demand for the full wages then earned when the vessels have complied with the public policy of the United States by paying half of their wages on demand. The provision of the statute with regard to the termination of the contract and the opening of the Courts is thus merely remedial, and it provides a remedy which Congress, in its wisdom and experience, felt was necessary for the enforcement of this public policy of the United States, for by reference to the debates in Congress and the reports of committees it is manifest that this public policy of the United States with reference to American seamen could not possibly be carried out without applying the same provisions of the act to foreign seamen shipped on foreign vessels under contracts made in foreign ports.

The statute, therefore, does not attempt to absolve seamen from the obligation of their contracts made upon foreign soil and valid where made, but it only imposes upon every foreign vessel, as a condition precedent to their entry into our ports, that they shall not violate the public policy of the United States with respect to the payment of seamen's wages; and in order that foreign vessels might have ample time to adjust all matters so as to comply with the condition imposed, Congress provided that, as to them, the statute should not go into effect until twelve months after its passage. Claimant en-

tered, therefore, into the contract at bar with full knowledge and warning as to the requirements of the statute, for the contract is dated May 8, 1916, two months after the statute had gone into effect. Hence there could be, under no circumstances, any right of property vested by that contract which was divested by the statute.

That the imposition of such a condition precedent to the entry of vessels into our ports is within the scope of legislative authority, this Court has clearly demonstrated in *Patterson v. Eudora*, for the Court said:

"The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which those vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn, it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign, as well as domestic vessels * * * Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the Courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file:

"Moreover, as 90 per cent of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtain-

ing their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid; and if, in a large port like New York, 90 per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other 10 per cent, being American vessels cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably appealed to Congress and fully justified the provision herein contained.'

"We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our Courts are bound to enforce those provisions in respect to foreign, equally with domestic, vessels."

In *Wildenhus's case*, 120 U. S., 1, Chief Justice Waite said:

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless, by treaty or otherwise, the two countries have come to some different understanding or agreement."

In *The Exchange v. McFadden*, 7 *Cranch*, 116, Chief Justice Marshall said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute . It is susceptible of no limitation not imposed by itself. Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty

to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood not less obligatory'. And again, after holding it 'to be a principle of public law that national ships of war entering the port of a friendly power, open for their reception, are to be considered as exempted, by the consent of that power, from its jurisdiction', he added:

"Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction, either by employing force or by subjecting such vessels to the ordinary tribunals."

A distinction is sought to be made by counsel because in the *Eudora* case the advance of wages to seamen was effected in the harbor of New York, whereas the shipping articles in the case at bar were signed in Liverpool. The fundamental principle involved, however, is the same and while it may be true as a general rule that the *lex loci* governs and it is also true that the intention of the parties to a contract will be sought out and enforced, both of these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by will of contracting parties can the public policy of a country be set at naught.

Story, Cons'l. of Laws, Secs. 38, 244, The Kensington, 188 U. S., 263.

In *The Kensington*, where a contract had been entered into in Belgium and it was stipulated that "All questions arising hereunder are to be settled according to the Belgium law with reference to which this contract is made", it was insisted that the law of Belgium should be applied and it was shown that the law of Belgium authorized the conditions. This Court said:

"The contention amounts to this: Where a contract is made in a foreign country to be executed at least in part in the United States, the law of the foreign country either by its own enforcement or in virtue of the agreement of the contracting parties, must be enforced by the Courts of the United States even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of contracting parties can the public policy of a country be set at naught.

Story, Confl. L., Secs. 38, 244.

"While, as said in *Knott v. Botany Worsted Mills*, the previous decisions of this Court have not called for the application of the rule of public policy to the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this Court. In *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co.*, 129 U. S., 397, 32 L. Ed., 788, 9 Sup. Ct. Rep., 469, the

question arose whether conditions exempting a carrier from responsibility for loss caused by the neglect of himself or his servants could be enforced in the Courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions exempting from responsibility for loss arising from negligence were valid by the laws of New York, and would have been upheld in the Courts of that State, it was decided that, in view of the rule of public policy applied by the Courts of the United States, effect would not be given to the conditions. In the very nature of things, the premise, upon which this decision must rest, is controlling here unless it be said that a contract made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the Courts of the United States, than would be a similar contract validly made, in one of the States of the Union. Nor is the suggestion that because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guildhall*, 58 Fed., 796, it was held that a stipulation in a bill of lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the Courts of the United States, although such a condition was valid under the law of Holland, in *The Glenmavis*, 69 Fed.,

472 the same rule was applied to a bill of lading issued in Germany by a British ship, for goods consigned to Philadelphia."

The public policy of the government is to be found in its statutes, and when the lawmaking power speaks upon a particular subject over which it has constitutional power to legislate, public policy in such a case in what the statute enacts.

United States v. Trans. Mo. Freight Association, 116 U. S., 290.

The statute as applied to foreign seamen on foreign vessels shipped in foreign ports under a contract valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, whenever these vessels enter our ports to load or deliver cargo and while in the harbors of the United States, is therefore clearly within the legislative powers of the United States and does not violate the constitutional provisions against the deprivation of property without due process.

We respectfully submit, therefore, that both questions should be answered "yes."

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APPENDIX

Argument of counsel for libellant on Points One and Two in brief filed in the Circuit Court of Appeals:

"POINT I.

"The right granted to every seaman to demand half wages at every port where the vessel shall load or deliver cargo arises after the expiration of five days to be computed from the commencement of the voyage and not after the expiration of five days from the arrival of the vessel in port.

"The language of the statute with respect to the time when the five days shall commence to run is, we think, free from ambiguity; the intent to make the five days run from the commencement of the voyage and not from the arrival of the vessel in ports, is, we think, plain. There is, therefore, nothing left for construction for the province of construction lies wholly within the domain of ambiguity.

"Encyclopedia United States Supreme Court Reporter Vol. II. p. 110.

"The Court *a qua* stands alone in the contention that the five days must be computed from the arrival of the vessel in port. Judge Ervin in *The Talus* and in *The Imberhorne* and Judge Chattfield in *The Delagoa* take the opposite view, and while the District Courts in all of the other cases reported in Federal Reporters, viz: *The Ixion*, *The Iverston*, *The Meteor*, *The London* and *The Westmeath* did not discuss this question, the decision in every case indicates clearly that the Court felt that the language of the statute

was free from ambiguity and that the five days were to be computed from the commencement of the voyage.

"The manifest intention and purpose of the law was to include within its beneficial provisions '**every**' seaman on vessels which would load or deliver cargo at '**every**' port of the United States, for the language of the statute is '**every seaman** on board, etc.,' and in '**every port** where the vessel shall load or deliver cargo."

"Now, it is elementary that '**every**' part of a statute must be construed with reference to '**every**' other part and every word and phrase in connection with its context, and that that construction must be sought which will give effect to its every word though ambiguous.

"Encyclopedia United States Supreme Court Reporter, Vol. II., p. 119.

"United States v. Gooding, 12 Wheaton, 460.

"Bend v. Holt, 13 Peters, 263.

"Blair v. Chicago, 201 U. S., 400.

"Vanderbilt v. Eidman, 196 U. S., 480.

"It is also elementary that a statute must be given that construction which will carry into effect the intention, purpose and object of the legislator and must not be construed so as to defeat its object.

"Encyclopedia United States Supreme Court Reporter, Vol. II., p. 118.

"Platt v. Union Pacific R. R. Co., 99 U. S., 48.

"Studebaker v. Perry, 184 U. S., 258.

"United States v. Jonas, 19 Wallace, 598.

"But the construction placed upon this statute by the Judge *a quo* divides the seaman into two classes;

one class composed of seamen on vessels which shall remain in port less than five days which it eliminates entirely from the benefits of the statute and the other class composed of seamen on vessels which remain in port longer than five days, which alone it includes. And even as to the latter class that construction renders the provision in a great measure nugatory, because, while the purpose which Congress had in view in conferring upon the seamen the privilege of receiving their wages at 'every' port was that they might use same while in port, that construction allows them half-wages, when they are about to depart from the port. Hence, such a construction clearly defeats the object which Congress had in view not only by eliminating one class entirely but by reducing the other class to a minimum.

"The construction of the statute which computes the five days from the commencement of the voyage on the other hand, extends its benefits to 'every' seaman in 'every' port, the only restriction being that he should receive his wages only five days after the commencement of the voyage and not sooner than five days after the last payment, which carries out fully the purpose of the statute.

"POINT II.

"Under the language or upon a proper construction of the statute it applies to foreign seamen shipped in a foreign port on a foreign vessel, under an agreement valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage.

"The words 'that this section shall apply to seamen on foreign vessels while in harbors of the

United States', when analized clearly indicates the intention of Congress that the generic term '**seamen**' should include both '**foreign**' and '**American**' seamen.

"It is obvious that Congress could not have used the adjective '**foreign**' so as to read '**foreign seamen on foreign vessels**' because Congress would have thereby excluded '**American**' seamen on '**foreign**' vessels which it clearly did not intend to do.

"Had Congress prefixed the word '**American**' so as to read '**American seamen on foreign vessels**', Congress would have excluded '**foreign**' seamen on '**foreign**' vessels, but it clearly did not intend to do so, for, intending to include '**foreign**' seamen on '**foreign**' vessels, Congress made use of the generic term '**seamen**' which embraces '**foreign**' as well as '**American**' seamen. That that was Congress' intention is clearly manifested and confirmed by the sentence which immediately follows:

"And the Courts of the United States shall be open to such seamen for its enforcement",—and without cost to foreign seamen. *Act of July 1st, 1916; The Memphia, 245 Fed., 484.*

"There would have been no necessity for this last clause if the intention of Congress had not been to include '**foreign**' seamen under the generic term '**seamen**'; that provision became necessary because without it the Courts would not have been open to '**foreign**' seamen who were compelled before the Statute of 1915 to obtain the consent of the consuls of their country as a condition precedent to the taking of jurisdiction by the United States Court.

"Sections 16 and 17 of the Act contain moreover, a full confirmation of the intent to include '**foreign**'

seamen on '**foreign**' vessels, for to carry out the provisions of the statute with respect to '**foreign**' seamen on '**foreign**' vessels, and in order that foreign seamen on '**foreign**' vessels might be released from their obligations under their contracts and might leave the service of the vessel without fear of being arrested and imprisoned as deserters, Congress enacted that the treaties between the United States and foreign countries which provided for the arrest and imprisonment of foreign seamen deserting from foreign vessels should be terminated; and to further carry out this purpose it repealed Section 5280 and so much of Section 4081 of the Revised Statutes, as related to the arrest and imprisonment of foreign seamen deserting or charged with desertion on merchant vessels of foreign nations in the United States.

"*R. S.*, 5280, 4081.

"It is evident, therefore, that Congress clearly intended that the statute should apply to '**foreign**' seamen on '**foreign**' vessels because it removed every obstacle which might interfere with their right to be released from their contract with impunity and to invoke the aid of the United States Courts to enforce payment of their wages in full upon the refusal of the master to comply with their demand.

"In reply to that part of counsel's argument founded upon the language of the title of the act, it might be sufficient to say that the title of an act 'may not be used to add or take away from the body of the statute', and that where the intent is so clearly and forcibly expressed, as it is here, it should not be considered at all; but the very title of the act indicates that Congress intended, by using the generic term '**seamen**', to include foreign seamen for the

very reason that it is an "act to promote the welfare of '**American**' seamen.

"It is obvious that the welfare of '**American**' seamen cannot be successfully promoted even under the beneficial provisions of the Statute unless the same privilege is extended to '**foreign**' seamen on '**foreign**' vessels, because under low-wage contracts providing for an unreasonably extended term of payment, seamen are reduced to the condition of involuntary servitude and come into competition with '**American**' seamen in '**American**' ports in foreign commerce.

"By what rule of economics, therefore, could '**American**' seamen on '**American**' vessels or on '**foreign**' vessels derive any advantage from the application of the statute without at the same time applying it to '**foreign**' seamen on '**foreign**' vessels? Hence, it became necessary for the purpose of promoting the welfare of '**American**' seamen to extend to foreign seamen also the privilege of the statute."

* * *

"Respectfully submitted,

"W. J. WAGUESPACK,

"HERBERT W. WAGUESPACK."

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CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 361

JOHN DILLON,

Appellant,

versus

STRATHEARN STEAMSHIP COMPANY, CLAIMANT
OF STEAMSHIP "STRATHEARN."

On a Certificate from the United States Circuit Court of
Appeals for the Fifth Circuit.

Reply to Brief of Counsel for British Embassy.

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POINT ONE.

The questions before the Court relate only to the constitutionality of the statute, and not at all to its construction.

It is manifest that the Court of Appeals was convinced that Section 4 of the statute applies to foreign seamen shipped on foreign vessels in foreign ports, and that, therefore, it desired no instruction upon the construction of the statute in that respect. The evidence of this conviction is found in the second question propounded, otherwise the question would be frivolous.

The cases of *Billings v. United States*, 232 U. S., 261, and *Towne v. Eisner*, 245 U. S., 418, 425, were brought up to this Court by writs of error, and, although there was also a question certified in *Billings v. United States*, it was by reason of the writ of error that the Court was vested with jurisdiction to review the whole case, and not at all by reason of the certification, for the power of the Supreme Court of the United States to review the proceedings of a Circuit Court in a case brought up on a certificate of division is strictly confined to the questions cited in the certificate. Matters not so certified are not before the Court for its consideration, but remain in the Court below to be determined by the Circuit Court, for your Honors have held that:

"The power of the Supreme Court of the United States to revise the proceedings of a Circuit Court in a case brought up on a certificate of division is strictly confined to the questions cited in the certificates. Matters not so certified are not before the Court for its consideration, but remain in the Court below to be determined by the Circuit Judges."

Ogle v. Lee, 2 *Cranch*, 33.

Wayman v. Southard, 10 *Wheaton*, 11.

United States v. Ambrose, 108 U. S., 336.
United States v. Briggs, 5 Howard, 208.
Dennistoun v. Stewart, 18 Howard, 565.
Jahn v. The Folmina, 212 U. S., 354.
Chicago, B. & Q. R. R. Co. v. Williams, 214 U. S., 492.
Stratton's Independence v. Howbert, 231 U. S., 399.

The Court, however, may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought here for review by writ of error or appeal.

Section 239, Judicial Code.

The Court, therefore, can decide the whole matter and controversy only after it has required the whole record to be sent up to it for consideration.

POINT TWO.

But if the Court shall consider the construction of Section 4 of the statute, it is patent that it applies to foreign seamen shipped in a foreign port on a foreign vessel.

The legislative history of the statute shows beyond a doubt that it applies to foreign seamen shipped in a foreign port on a foreign vessel. (See brief of Attorney-General, pp. 11-23.)

Counsel says, in substance, that the word "foreign" was not used to qualify "seamen"; but it is patent that there is

no other word that Congress could have used to include both American and foreign seamen except the generic word "seamen"; and, besides, the provision in the act which reads:

"And the Courts of the United States shall be open to such seamen for its enforcement," * * *

would otherwise be nugatory. (See pp. 25, 26, 27, 28, of libellant's brief, Appendix.)

All the decisions of all the Federal Courts, District and Circuit, without excepting this case (else the Court would not have considered the provision as to the five days), have proceeded upon the theory that the law applied to foreign seamen shipped in a foreign port upon a foreign vessel, and no other construction was ever placed upon the statute by any of the said Courts, not even in *Clyman v. The Ixion*, 237 Fed., 142, if that decision be read in full. (See cases cited in brief of British Embassy on pp. 25, 26, 27, 28.)

Even in *McDonald v. Sandberg*, from which the learned counsel for the British Embassy quoted so extensively, the Court of Appeals for the Fifth Circuit, the very same Court which certified the question now under discussion, came to the conclusion that the law applied to a foreign seaman shipped in a foreign port on a foreign vessel, because it said:

"The abrogation of existing treaties was necessary, though the scope of the act was confined to advances made in American ports, both for the purpose of transferring wage disputes on foreign vessels to the Courts of the United States from the Consular Courts of the treaty nations, as provided for

in Section 4 of the act, and to enable the provisions of the law with regard to arrests for desertion to be executed without conflicting with existing treaties."

And the Court, therefore, proceeded to the consideration of the question whether advances made in a foreign port by a foreign vessel should be deducted, which the Court could not have done if it had not concluded that Section 4 applied to the facts of that case.

POINTS THREE AND FOUR.

The statute does not exceed the legislative power of the United States, and does not violate the Constitution of the United States as divesting a vested right.

There is no controversy as to whether the United States has extraterritorial jurisdiction. But conceding that Congress has no extraterritorial jurisdiction, still the law imposes a condition of entry into the ports of the United States; and, as Congress can exclude all foreign ships altogether, it has the power to impose whatever condition it sees fit from considerations of public policy without violating the due process clause of the Constitution.

Oceanic Steamship Navigation Co. v. Stranahan, 214 U. S., 320.

U. S., ex rel. Turner, v. Williams, 194 U. S., 279.

Butfield v. Stranahan, 192 U. S., 470.

Defendant, moreover, entered into the contract at bar with full knowledge and full warning of the condition imposed

upon its entry into our ports, and by entering into our ports accepted this condition, and could not therefore under any circumstances be divested of any vested right.

POINT FIVE.

By reference to all of the cases cited by learned counsel for the British Embassy on pages 25, 26 and 27 of his brief, in which foreign seamen, shipped on foreign vessels in foreign ports, were libellants, the Court took the position that Section 4 of the statute applied, and there is not a single case on record where the Court took a contrary view.

We respectfully submit, therefore, that both questions should be answered "Yes."

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Sophomore Guide to the University

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Supreme Court of the United States.

OCTOBER TERM—1917.

JOHN DILLON,
Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship
"STRATHEARN",
Appellee.

No. 868.

**Brief on Behalf of the Strathearn
Steamship Company, Claimant
of Steamship "Strathearn",
Appellee.**

Statement of Facts.

This case comes before this Court on certification by the Circuit Court of Appeals for the Fifth Circuit of two questions of law, relating to the "Seamen's Act" of March 4th, 1915, commonly known as the "La Follette Act". These questions may be briefly stated as follows:

1. Is §4530 of the United States Revised Statutes, as amended by the "Seamen's Act", "constitutional?"

2. Is such section ^{now} constitutional as applied to "seamen on foreign vessels while in harbors of the United States?"

For the information of this Court, the entire Record has been certified to it. Where the Record is referred to in this brief the paging of the Record in the Circuit Court of Appeals is intended.

The suit was brought in the District Court of the United States for the Northern District of Florida and resulted in a dismissal of the libel (*The Strathearn*, 239 Fed. Rep., 583).

John Dillon, a British subject, shipped as carpenter on board the British Steamship "Strathearn" at Liverpool, on May 8th, 1916. By the shipping articles which he executed at that time, it appears (Transcript of Record, page 16) that Dillon agreed:

"to serve on board the said ship * * * on a voyage from of not exceeding three years' duration to any port or places within the limits of 75° North and 60° South latitude commencing at Liverpool, proceeding thence to Newport News and/or any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom as may be required by the Master."

The articles contain among other agreements the following:

"No cash shall be advanced abroad or liberty granted other than at the pleasure of the Master."

The "Strathearn" proceeded to Newport News, thence to South America, and from there to

Pensacola, Florida, arriving at Pensacola on the afternoon of July 31st, 1916. John Dillon worked throughout the following day, August 1st, but according to the master's testimony (McKenzie's testimony, page 24) and his own admission (Dillon's testimony, page 44), he left the vessel without permission on the morning of August 2nd and remained away all day. Before leaving the vessel Dillon made some complaint to the Master as to working conditions, and left to see the British Counsul about this difficulty (Dillion's testimony, page 45). While ashore he called on a lawyer and was advised concerning the Seamen's Act and returned to the ship and demanded half wages under its alleged terms, and, upon being refused, at once brought this libel.

It appears that after his libel was filed Dillon worked from time to time upon the vessel while it was in port at Pensacola. That he was in some doubt as to his status as a seaman on the ship appears from his direct examination (Transcript of Record, page 43), and from his redirect examination by his own counsel (Transcript of Record, page 48) where he testifies as follows:

"Q. I believe you said that you did that simply to have a place to get food and sleep, and you are expecting no pay for it? A. I leave that to your advice."

It is not intended in this memorandum to repeat the argument in the Brief of the Counsel for the British Embassy made on behalf of Appellee, and this Brief is more especially directed towards certain suggestions of the Appellant.

POINT I.

The libelant's case does not fall within the provisions of the statute in question because it was not intended to apply to a foreign seamen entering into a valid contract in a foreign port for service on a foreign vessel.

The portion of the statute here to be discussed is the last proviso of the section in question which is as follows:

"And, provided further that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This proviso does not in terms apply to foreign seamen. The purpose of the Act may be fulfilled without broadening its meaning to include all foreign seamen. It is "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest, and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea". The title may be looked to as an aid in the construction of an act and it indicates that Congress had in view American seamen only (See cases cited Brief for British Embassy).

If the scope of the Act is so broadened by this proviso as to include this libellant, that is, a

British seaman serving on a British vessel under a contract with another British subject made in Great Britain, it is necessary to impute to Congress an intention to enact legislation having force beyond the territory of the United States; to interfere with friendly foreigners by destroying the contracts which they have made between themselves at home merely because their ships visit our ports; and to interfere with and attempt to control the relations between the subjects of a foreign friendly power aboard their own ships while they are temporarily in American waters. The language of the proviso does not require such a construction. It may readily be so construed as to avoid such results by excluding from its operation foreign seamen on foreign vessels under agreements made in foreign countries.

The Appellee contends that the object of Congress was to make the seamen a "free man". "He must be within his right, if he chooses to leave the vessel in any safe place, and he must have the right to draw at least half of the wages due him in any harbor". * * * The seaman's physical needs would hold him in the vessel with a stronger grip than the threat of imprisonment" (*American Seaman* by Hon. John E. Raker, p. 13). In *American Sea Power and The Seaman's Act* by Andrew Furuseth, p. 21 quoting from the report of the Legal Aid Society "As a rule, seaman on foreign ships demand one-half their wages and then quit. The result is, the foreign ships' master must refurnish his vessel with a crew before leaving".

In simple words it is contended that the object of Congress was to encourage desertion

from foreign vessels, not to promote the welfare of American seamen.

These principles are much too short sighted even to be accepted as American principles—they savor Bolshevism and like such principles fail to accomplish their object. Under British law the breach of a seaman's contract is desertion and the punishment for desertion is imprisonment. What avail is it for a British seaman to desert and to ship on an American vessel with higher wages and when he arrives in a British port to be imprisoned.

If "crimping" is what is sought to be abolished let it be frankly and energetically accomplished.

The argument further implies that it was the will of Congress to impose its standards not only on behalf of American Seamen but all seamen American or foreign. Fundamentally and radically the argument is at variance with the first principles of our Republic and is an attempt to violate the principles of the sovereignty of each nation and the comity of nations.

"It is believed to be an accepted doctrine that the right of a vessel to be governed in respect of her internal discipline by the laws and regulations of her own country is not forfeited by her entrance into the port of foreign country"

(Moore International Law Digest, Vol. II, p. 335, quoting from Mr. Fish, Secretary of State).

"And so by comity it came to be generally understood among civilized nations, that all matters of discipline and all things done on board which affected only the vessel or

those belonging to her * * * should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation, or the interests of its commerce should require" Wildenhus's Case, 120 U. S. 1.

If the indirect object of the act, is to cause desertion among British seaman it has undoubtedly accomplished its object. It has been notorious that British ships have been detained in the ports of the United States because their crews have deserted just before sailing. This surely is unfriendly to an ally upon whose vessels at least half of the United States Army has been transported to France.

It is wholly inconsistent for this court to construe this act and the effect of the previous acts of Congress to be that American seamen are subject to American law not only in our own ports but in foreign ports, and at the same time to hold that foreign seamen on foreign vessels shipped in foreign ports are subject to their own law in foreign ports but are subject to American law when at our ports. It is seeking to impose our own conceptions of the rights of seamen upon the whole world in violation of the comity of nations.

POINT II.

If construed as appellant contends, this statute violates the due process of law clause of the constitution of the United States.

Construed in accordance with libelant's contention this Act would give him wages to which he is not of right entitled under his contract; these same wages it would take from the ship; it would deprive the ship of libelant's services to which, under their contract, it is entitled; and it would take from the ship a right to defend an action brought by the seaman for wages which under his contract he has not yet earned and to which he is not entitled.

It is plain that at the time and place the shipping articles of the "Strathearn" were executed, the parties to them were not amenable to this Act of Congress. It could in no way be imported into their contract, nor could their contract have been made in contemplation of it. If its provisions have attached to them and to their contract at any time, it was only at the time the "Strathearn" entered a port of the United States. Immediately before that point of time the owners of the ship and the libelants were mutually bound by the terms of their contract. The owners had the right to require the complete performance of it to the end, and had the right to defend such an action as this libel by pleading the contract. Plainly these rights are to be regarded as property, and at the moment of the arrival of the ship in an Ameri-

can port, the Act of Congress, as the libelants would construe it, would have the effect of taking from the owners of the "Strathearn" this property at one stroke. Such a taking of property is prohibited by the Constitution of the United States, and if this statute is given the construction contended for by libelant, it is in violation of the Constitution of the United States and void.

The argument in the Brief of the Appellant that the effect of the statute is "merely remedial" in opening the Courts of this country to foreign seamen is contrary to the statements (cited supra) and to the statute itself. Properly, Congress has refused the forums, provided for the enforcement of its law, to the enforcement of remedies which are contrary to its public policy (such as imprisonment for desertion) and has made it illegal to enter into a contract contrary to its law within its jurisdiction (*The Eudora*, 190 U. S., 169), but it is radically different to open its forums not for the enforcement of its law but for the avowed purpose of interfering with and rendering void the contracts, laws and regulations of a friendly power.

The argument of the appellant (derived chiefly from the *Kensington*, 183 U. S., 263, and the cases referred to in that opinion) that the place of performance governs the interpretation of the contract and that a stipulation in the contract whereby the parties seek to avoid the public policy of the place of performance will be held void loses sight of the fact that the cases are confined to a contract made in a foreign country to forward merchandise to the United States. The cases of *United States vs. Chavez*, 228 U. S., 525 and the *United States vs. Freeman*, 239 U.

S., 117, are cases where Congress undertook to control actions to be performed in the United States.

In the instant case it cannot be held that the law of the place of performance is the law of the United States for the reason that the place of performance was not the United States. The place of performance was the *Strathearn*, a British ship, and although she was not immune from process while in the ports in the United States, still she did not cease to be British. While amenable to the police power of the United States and of its several states "her discipline and all things done on board which affected only the vessel or those belonging to her" must be dealt with according to British law. The agreement to pay the seamen's wages was not to be performed in the United States—the wages were to be paid only upon the return of the vessel to a port in the United Kingdom except as the Master might voluntarily make prior payments.

The temporary stay in a port of the United States cannot be held to take away the right of the owner to the security, which he held for the performance of the seamen's contract, by giving the seaman a right to the payment one half of such security upon demand.

It is respectfully submitted that the questions should be answered in the affirmative unless the act be construed unapplicable to a foreign seaman shipped on a foreign vessel outside of the United States.

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Steamship Company.

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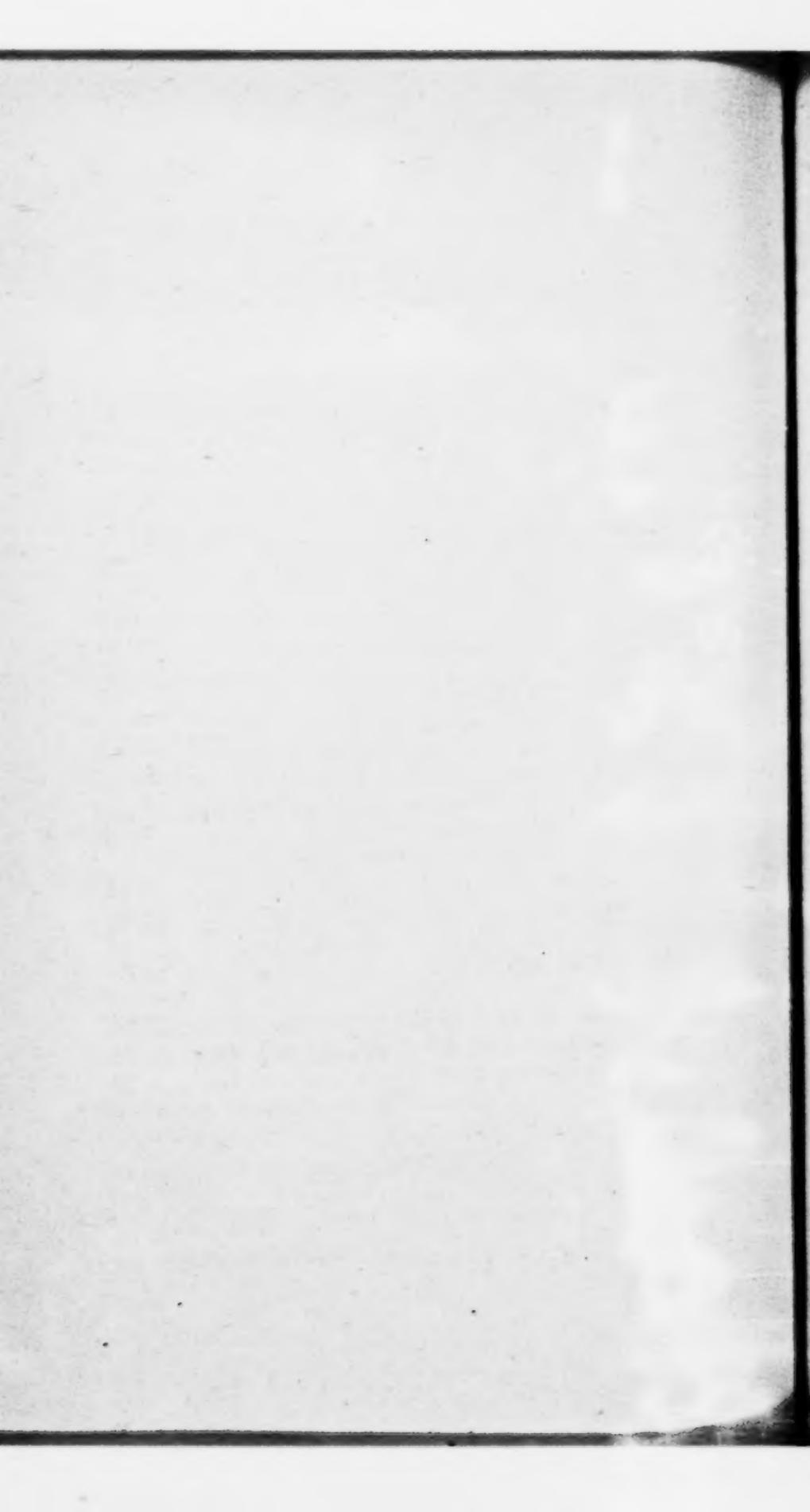
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THE SEAMEN'S ACT CASES.

In the Supreme Court of the United States

OCTOBER TERM, 1918.

JOHN DILLON

v.

STRATHEARN STEAMSHIP COMPANY, CLAIMANT OF STEAMSHIP "STRATHEARN." } No. 361.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ERIK SANDBERG, CARL JANNSON, S. K. BENJAMINSEN, AND JOHN PERANEN, PETITIONERS,

v.

JOHN McDONALD, CLAIMANT OF THE BRITISH SHIP "TALUS."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PAUL NEILSON ET AL., PETITIONERS,

v.

RHINE SHIPPING COMPANY, CLAIMANT OF THE SAILING SHIP "RHINE." } No. 393.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

JOHN HARDY ET AL., PETITIONERS,

v.

SHEPARD & MORSE LUMBER COMPANY, CLAIMANT OF THE BARKENTINE "WIND-RUSH." } No. 394.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF THE UNITED STATES AS AMICUS CURIAE.

(1)

STATEMENT OF THE CASE.

The above-styled cases involve the validity of vital sections of the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1165, 1167, 1168, sections 4 and 11. The main question is whether, in an effort to aid the national merchant marine, such conditions as are fixed by sections 4 and 11 may be validly imposed to the entrance of foreign vessels into American ports. On account of the national interest in the development of the American merchant marine the United States files this brief as *amicus curiae* in accordance with leave obtained.

THE STATUTE.

Sections 4 and 11 of the Seamen's Act are as follows:

SEC. 4. That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the

seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

SEC. 11. That section twenty-four of the Act entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce," approved December twenty-first, eighteen hundred and ninety-eight, be, and is hereby, amended to read as follows:

"SEC. 24. That section ten of chapter one hundred and twenty-one of the laws of eighteen hundred and eighty-four, as amended by section three of chapter four hundred and twenty-one of the laws of eighteen hundred and eighty-six, be, and is hereby, amended to read as follows:

"SEC. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any sea-

man wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

* * * * *

"(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions

shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

THE FACTS.

The Strathearn, No. 361. Dillon, a British subject, shipped at Liverpool on a ship of British registry on May 8, 1916. The shipping articles, signed at Liverpool, provided for a journey to Newport News and other ports, to end at the United Kingdom. So far as appears from the certificate, no place or time of payment of wages was specified. The agreement was valid according to the laws of Great Britain (Certificate, p. 1).

On arrival of the ship in Florida, after demand and refusal, this libel was filed for one-half of the wages earned. The District Court dismissed the libel (239 Fed. 583). On appeal to the Circuit Court of Appeals for the Fifth Circuit two questions are certified to this court. These are: (1) Is section 4 of the Seamen's Act constitutional? (2) Is the section valid in so far as it provides: "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement"?

The Talus, No. 392. This was also a libel under section 4 for one-half wages earned. Here, however, an advance was made abroad. Libellants, British subjects, at Liverpool, in November, 1916, signed shipping articles for a voyage on a British ship. Money was advanced to libellants in Liverpool before they boarded ship to such an amount that, if taken together with certain undisputed credits, more than one-half of the total wages then earned had been paid at the time of the demand, refusal, and libel. If the advance is not to be counted, one-half the wages had not been paid (R. 19, 20). It is lawful and customary to make such advances in Great Britain. The ship entered the port of Mobile, Alabama, in February, 1917.

The District Court held that under sections 4 and 11 of the Seamen's Act the money advanced prior to the earning of any wages could not be claimed as a credit in a suit in our courts. And it held the sections constitutional. R. 10 *et seq.*; 242 Fed. 954. The Circuit Court of Appeals for the Fifth Circuit took the ground that section 11 attached criminal penalties coextensive with the civil provisions and could not be presumed to apply to an advance made in a foreign country, lawful where made. It therefore reversed the decree below. 248 Fed. 670. The case is here on certiorari.

The Rhine, No. 393, and *The Windrush*, No. 394. In these cases the sole question is as to the validity, under sec. 11, of advances paid to a crimp by American vessels in foreign ports. The two cases present

very similar facts and were submitted together in the lower courts. Page references herein are to the record in number 394.

In May, 1916, libellant seamen signed shipping articles before the American vice consul at Buenos Aires, Argentine, for a voyage to the United States (R. 16). The ship had American registry. At the time each of the libellants also signed a receipt or order for a month's wages, in most instances \$25. In no instance did the seamen receive the money so "advanced" and the libels are brought to recover the amounts.

The "advances" were all paid to one Tommy Moore. Some of the libellants owed Moore a dollar or two for board and lodging (R. 8, 26). Others owed him nothing (R. 18, 22, 33, 38), but signed the receipt under the following circumstances:

Udson applied to the master of the *Windrush* for employment, and was told he would have to go to Tommy Moore (see R. 35). He reported to Moore saying, "The captain sent me here." Moore replied, "All right; you belong to the crew then" (R. 21).

Robur asked the master for a job and was told "go to Tommy Moore" (R. 37).

Goldstein, the cook, was employed by the mate of the *Windrush* some weeks before she left port. Each week Moore came on board, paid Goldstein part of his weekly wages and retained a balance (R. 25, 26). Goldstein had to sign the "advance" order or Moore would not have let him sail (R. 28).

It was stipulated below that the master, if called, would testify that the American Vice Consul instructed him, in the presence of the libellants, to honor the receipts in favor of Moore; and "that said master would testify that he (the master) received neither directly nor indirectly any part of said advances."

The seamen were citizens of the United States and of foreign nations (R. 8, 16, 20, 28). It was stipulated that the Consular Regulations provide: "The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports" (R. 7). The date of these regulations is not shown by the record.

In the District Court, decree was entered for the libellants (R. 40; 244 Fed. 833). Judgment was reversed by the Circuit Court of Appeals for the Second Circuit, Learned Hand, J., dissenting (250 Fed. 180). The grounds of the decision were mainly (1) that prior judicial and departmental construction of the language was adopted by Congress, and (2) that the imposition of the criminal penalty showed an intent to restrict the application of the statute to acts done in the United States. The cases are here on certiorari.

CONTENTIONS OF THE PARTIES.

The argument against the validity of section 4 in the case of the *Strathearn* may be stated as follows: The seaman's contract made abroad, and valid where made, does not provide for payment of any wages

in the ports of the United States. Presumptively, therefore, payment is to be made at the home port upon return. If part wages must be paid in ports of the United States, the owner of the vessel is deprived of property without due process of law.

In answer, it is urged that the statute manifests a public policy dictated by high national interests, and carries a direction to our courts not to recognize or enforce contracts not consistent with that policy; that the statute imposes upon the entry into American ports of foreign merchant vessels the condition that they consent to pay their seamen one-half the wages earned; that the condition is valid, as an exercise of sovereignty in the regulation of foreign trade.

In the case of *The Talus*, involving section 11, the contention as to deprivation of property rights is reinforced by the element that in part performance of the foreign contract certain moneys were advanced to the seamen.

To this contention like answer is made.

As to the interpretation of section 11, to the contention that the imposition of criminal penalties shows an intent to limit the operation of the act to United States territory, it is answered (1) that the criminal remedy is separable and that a separate provision of the section covers libels for wages, which is unnecessary if the criminal and civil provisions were designed only to be coextensive; (2) that the project to assist the decadent American merchant marine, the prime purpose of the Seamen's Act, is

thwarted unless such foreign advances may be disregarded in civil suits; and (3) that the rejection of amendments designed to limit the section to advances made in this country shows the precise intent.

With respect to the advances made abroad by masters of American vessels, in the cases of the *Rhine* and *Windrush*, it is contended that such advances were intended to stand on the same footing as advances by foreign vessels which should enter our ports; that as to contracts of employment of American seamen, questions of validity as well as of enforcement in the forum are to be determined by American standards. The holding of the court below, that an inconsistent prior executive and judicial construction was adopted by the legislature is, we say, contrary to the prime purpose of the act and is negatived by the language used by Congress in amending the former statute.

The issues are made up by the meeting of the respective contentions outlined.

ARGUMENT.

THE STRATHEARN.

I.

Section 4 applies to foreign contracts of employment of foreign seamen on foreign ships and is constitutional.

1. **The evil sought to be remedied was the handicap of higher wage cost under which the then decadent American merchant marine was laboring.**

Resuscitation of the languishing national merchant marine had long been a public demand. In his annual message to Congress of December 7, 1903, the President urged the appointment of a commission to investigate and report "what legislation is desirable or necessary for the development of the American merchant marine and American commerce, and incidentally of a national ocean mail service of adequate auxiliary naval cruisers and naval reserves." The Merchant Marine Commission was created by act of April 28, 1904, c. 1813, 33 Stat. 561, which held elaborate investigations and reported to Congress January 4, 1905 (39 Cong. Rec. part 1, pp. 437-439; S. Rept. No. 2755, 58th Cong. 3d session).

In the early years of the history of the Nation the American marine occupied a proud position. Even as late as 1821 and 1826 the percentage of imports and exports carried in American vessels was 88.7 per cent and 92.3 per cent, respectively. In 1870 it had declined to 35.6 per cent, and in 1913-1914

it was 10.1 per cent and 9.7 per cent, respectively (Annual Report, Commissioner of Navigation 1915, p. 159). As stated in the report of the American Merchant Marine Commission, "The condition of the remnant of the ocean fleet of the United States is therefore absolutely desperate * * *. Our war fleets in the Mediterranean and South American waters scarcely see a United States merchant flag from one year to another" (Report, *supra*, pp. vi, vii). We had long ceased to be a seafaring people.

The dangers incident were pointed out. Lack of a merchant marine means the want of the naval reserve and transport service indispensable in time of war. The Merchant Marine Commission estimated, moreover, that \$150,000,000 was paid annually to foreign shipping for freight, mail, and passenger service (p. 5). Also, the lack "of marine delivery wagons" to South America was held to be a prime cause of our inadequate commerce with South America (p. 6).

The decline of the merchant marine was laid to many causes. It was everywhere recognized that the American maritime industry suffered from (1) a higher cost of construction of ships, and (2) a higher cost of operation, due primarily to higher wage standards. The projects to overcome both handicaps have been many. Admiralty subventions have been proposed, as well as navigation bounties and construction bounties. A mail subsidy project had been provided by act of March 3, 1891, c. 519, 26 Stat. 830. The Merchant Marine Commission reported in 1905 in favor of subventions. The minority

proposed the imposition of discriminating duties. The former project failed on account of public sentiment against subsidies. The latter was attempted in 1913 by the 63d Congress, but on account of prejudice against the disruption of treaty relations likewise came to naught. (Sec. IV J, subsec. 7 of the act of Oct. 3, 1913, c. 16, 38 Stat. 114, 196; see *Five Per Cent Discount Cases*, 243 U. S. 97.)

An attempt to remove the handicap of higher cost of labor was made by act of June 26, 1884, c. 121, 23 Stat. 53, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes." Section 20 provided that American vessels could engage seamen in foreign ports to serve for round trips without being required to reship them in ports of the United States. The effort was to reduce the standard of American seamen's wages to that of the foreign competitors. It failed of the desired results. In the act of March 4, 1915, the purpose was to remove the same handicap, but by the opposite method of seeking to raise wage standards to the American level.

2. The legislative purpose to equalize the wage cost of foreign and domestic vessels leaving our ports was accomplished by limiting the enforcement of foreign contracts.

The plan was simple. Section 16 of the Seamen's Act abolished the remedy of arrest and imprisonment for desertion of foreign seamen, and regardless of the contract made abroad the treaties requiring

its specific performance were abrogated. Wages are higher in American than in foreign ports. It was contemplated that the foreign seaman who signed shipping articles at the lower wage scale prevailing in foreign ports would, since not prevented by legal process, follow economic law upon reaching American shores and find a job here at higher wages. The foreign ship must then fill up its crew at the current wages in our port. Thus both the American and competing vessels leaving the port would have the same labor operating cost.

But such a plan would prove entirely abortive if the foreign seaman in our ports were unable to obtain sufficient money to carry him until he secured his next job and were compelled by his immediate necessities for food and lodging to remain with the foreign ship. The purpose of the proviso to section 4 is to provide that sum of money.

Section 4 is an amendment to Revised Statutes, section 4530, as amended by section 5 of the act of December 21, 1898, c. 28, 30 Stat. 756. The act of December 21, 1898, provided for payment to the seaman of half the wages due him at every port where the vessel unloads or delivers cargo "unless the contrary be expressly stipulated in the contract." The quoted clause was stricken out and a proviso added as follows:

And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of

the United States shall be open to such seamen for its enforcement.

Presumably because there was no doubt that the statute was intended to cover a foreign seaman who had signed his contract abroad, no question as to construction is certified to this court.

The language is hardly susceptible of a contrary interpretation. It would have practically no room for operation if limited to the case of contracts by foreign seamen executed in the United States. Foreign seamen on foreign vessels are usually shipped abroad, and the cases would be few indeed of contracts made in ports of the United States where both the vessel and the seaman return to our harbors.

(a) **The deliberate intent to cover contracts made abroad is shown by the committee reports and legislative history.**

The proceedings of that body show that the proviso covering seamen on foreign vessels was added for the precise purpose of aiding the American merchant marine—a purpose which fails of accomplishment if all seamen on all foreign ships who have made contracts abroad at low wages, and enter American ports, do not feel at liberty in our harbors to demand half of their wages and seek other employment. The committee reports furnish conclusive evidence on the matter. House Report No. 645, 62d Congress, 2d session, which accompanied H. R. 23673, reported favorably a bill in which section 3 was in the language of section 4 of the present Sea-

men's Law. The favorable majority report stated (pp. 7-8):

Two things are essential to the building up of our merchant marine; one is the creating of a condition where the initial cost of the vessel is as low as that of the foreign vessel and the other is an equalization of the operating expenses.

This bill will tend to equalize the operating expenses. Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States; hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, but it is proposed by this bill to give the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage. That will equalize the cost of operation, so that vessels of the United States will not be placed at a disadvantage.

* * * * *

Section 3 amends present law by striking out the following: "Unless the contrary be expressly stipulated in the contract" and inserting in its place as follows: "and all stipulations to the contrary shall be held as void".

The section thus amended gives the seaman the right to demand one-half the wages due him in any port, notwithstanding any contract to the contrary, and extends its application to seamen on foreign vessels while in American harbors, and the whole section becomes part of the means by which the cost of operation of all vessels taking cargo out of any American port may be equalized.

One of the grounds on which the minority report objected to the legislation was that the statute affected the enforcement of contracts made abroad which are valid where made.

Definite language is used also in the favorable House report accompanying S. 136, which became the seamen's law (H. Rept. No. 852, 63d Cong., 2d sess.), and a quotation is made from the House report above cited.

The legislative history of the act is confirmatory. Section 3 of H. R. 23673, Sixty-second Congress, Second session, was presented to the House by Mr. Wilson of Pennsylvania, on April 23, 1912 (48 Cong. Rec. 5242). Opposition developed on the ground that it was not in accordance with comity and was not good policy thus to affect foreign contracts of strangers who desire to trade with us (48 Cong. Rec. 9259). An amendment was offered, striking out the proviso with reference to the foreign seamen (48 Cong. Rec. 9502, 9503). The difference in the wages of American seamen from British seamen, amounting to 16 to 20 per cent, was, however, cited (48

Cong. Rec. 9435; see also Report Commissioner Navigation, 1906, pp. 64, 92), and it was said the section would have the effect of raising wages to the American level and equalizing labor cost of operation of foreign and American boats (48 Cong. Rec. 9259, 9429, 9431, 9432, 9434, 9435). So the amendment was rejected by the House (48 Cong. Rec. 9502, 9503).

In the third session of the Sixty-second Congress on February 26, 1913, Mr. Burton presented to the Senate from the Committee on Commerce a substitute for H. R. 23673 which struck out the proviso that the act should apply to seamen on foreign vessels while in the harbors of the United States, and provided instead as follows:

This section shall apply to seamen on foreign vessels owned in major part by American citizens, corporations, or holding companies when such vessels are in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement (49 Cong. Rec., pt. 5, p. 4567).

In presenting the report Mr. Burton said:

* * * we do not believe that we have any right to interfere with the management of foreign ships on articles signed abroad.

The Senate committee substitute was passed by both Houses, but the President did not sign the bill, so it failed to become law (49 Cong. Rec. 4588, 4806, 4854).

In the next Congress, the Sixty-third, however, sentiment changed. The act was reported in the broad terms as finally passed. The prevailing sentiment was expressed by Mr. Fletcher, who was acting chairman of the Senate committee in charge of the bill, as follows (50 Cong. Rec. 5749):

First, Senate bill 136 permits seamen on foreign vessels to leave their vessels in ports of the United States; that was one great thing to be worked out; second, it permits seamen to draw one-half of the pay due them in any port where the vessel lies or delivers cargo, making this section applicable to foreign vessels while they are within the jurisdiction of our laws;
* * *

The right to one-half the earned wages at a stopping place on a voyage would seem to be reasonable. It would not induce a sailor to leave a ship when he was being decently treated and fairly compensated to have the privilege of quitting and collecting only one-half of what he had earned. On the other hand, if the sailor is maltreated, or for sufficient reason he quits the vessel, perhaps in a strange land, he should at least have half the wages he has earned in cash. The forfeiture of the other half would seem to be ample allowance by way of liquidated damages for breach of his contract.

See also 52 Cong. Rec. 4646, as follows:

Mr. HARDY. We are struggling to build up an American merchant marine. If you do not have rules that restrict competitors of the

American merchant marine, to the full extent and just as you restrict the American merchant marine, you never can have an American merchant marine. The real milk in the coconut seems to be this. * * * A seaman comes from Naples here on a low wage. When he gets into the port of New York, he is dissatisfied. He has been out a month, the ship is safe in port, and some wages are due him. The shipmaster, fearing that perhaps he will not return, will not give him a dollar. He can not go out in New York and pay for a night's lodging or for a meal. Had you not just as well have the law say, "We will arrest him and put him back," as to have the law say that when he gets to New York he can not get a dollar or a dime of the wages due him simply because he has contracted that way across the water? We provide here that when these men come to our ports they shall be entitled to demand half the wages earned, and if refused to go to our courts and sue for one-half of the wages due them. Mark you, we do not encourage the seamen to desert, and we make him lose all he leaves—one-half his wages and his clothing and property on board the ship—but we give him a little mite, so that he may buy a night's lodging or pay for a breakfast.

* * * We want to build up an American merchant marine. We want to put the American shipowner on the seas governed by the same rules, subject to the same restrictions that the foreign shipowner is under; no more, no less, and this bill in addition to striking the shackles from the limbs of the seaman

places our shipowner on the ocean on equal terms with the shipowner of any other nation with one exception, and that is that he may have to pay more for his vessel, but if it is one in the foreign trade only he gets his vessel on equal terms. Then when you put two vessels under different flags, plowing the same waters, and the seaman is free, the seamen of those two vessels will receive the same wages because the seamen will go to where they can get higher wages. But if you shackle them, if you say we will arrest you if you desert, or we will hold you to your ship by the pangs of your stomach, or we will not let you sleep, we will not let you eat, we will not give you anything you have earned if you leave the ship, if we do that then the shipowner abroad can hold in chains his seamen as long as he pleases.

(b) **A reading of the Act as a whole also shows this intent.**

Consideration of the act of 1915 as a whole shows how carefully Congress had framed the entire program for the resuscitation of the merchant marine. It was patent that ships of American construction would be of little avail, especially in time of emergency, if American seamen were not at hand to man them. Historical examples were cited to show that the best equipped vessels were valueless in battle if manned by landsmen, as against ships of poorer construction handled by men of experience before the mast. It was necessary again "to get the American boy to sea."

Section 4, by permitting the raising of wages, conduces directly to that end. Cognate provisions throughout the act, which is entitled in part "An act to promote the welfare of American seamen," are no less effective. The abolition of arrest and imprisonment by section 16 makes the seaman's calling more dignified, and consequently more attractive. Section 6 abolished the cramped forecastle quarters, in which it was frequently almost impossible to live, so far as vessels thereafter built are concerned. Section 10 improves the scale of provisions. Section 11 was aimed at the "crimp" and is a vital part of the entire scheme, as will soon be seen. The efficiency and language requirements for seamen in section 13 also have the effect of increasing the number of American seamen.

In the spring of 1915 the European war had strikingly brought to the attention of the legislature the importance of an adequate shipping service, and the Nation was thoroughly aroused to the evils incident to the scanty existing facilities. Congress made a bold attempt to aid the national interests in the proviso to section 4. Opinions may differ as to the wisdom of the method adopted. The legislative plans may or may not work out as intended. Foreign countries may take counter measures. There can be no doubt, however, that foreign vessels were deliberately touched, especially those which made low-wage contracts with seamen abroad.

It only remains to inquire whether the subjecting of such vessels entering our ports to the conditions specified is within the power of the National Legislature.

3. Section 4 is valid as a condition upon the entry of foreign vessels into American ports.

After March 4, 1915, every master of a foreign vessel was advised that if he entered an American port subsequent to the time the act went into effect he must pay his seamen half of the wages earned. Ample notice was given in section 18, which provided that the act should take effect as to foreign vessels twelve months after its passage; and where treaty provisions were involved, after the expiration of the period fixed in the notice of abrogation of the treaty articles, as provided in section 16.

A foreign merchant vessel has no vested right to enter our ports. The act of entry signifies acceptance of the conditions imposed.

The power to impose such conditions is an incident to the sovereignty of the nation. Vattel, Law of Nations (Chitty, ed. 1863), p. 40. The faculty to prevent all foreign vessels from entering the ports of the country, as in an embargo, and to admit them only upon conditions within the uncontrolled discretion of the legislature, is plenary and well settled. See *Patterson v. Bark Eudora*, 190 U. S. 169; *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320. The power has been exercised by Congress in its absolute discretion from the beginning with reference to the exclusion of merchandise from foreign countries. *Butfield v. Stranahan*, 192 U. S. 470, 492, 498; *Weber v. Freed*,

239 U. S. 325, 329. Familiar exercise of the power with reference to aliens brought this comment from the court in *Turner v. Williams*, 194 U. S. 279, 289:

Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in * * *.

An analogy in the British law is the requirement that the Plimsoll load-line shall be observed by foreign vessels. Merchant Shipping Act of 1894, secs. 437-445, 57 & 58 Vict. c. 60.

It seems clear in this case that Congress was seeking to impose the wage requirement as a condition to the entry of foreign vessels. The legislature well recognized that there is no extraterritorial power over foreign contracts of foreigners. It knew of the provisions of the foreign laws and of the treaties under which matters of wages on foreign vessels were permitted to be settled in this country according to the laws of the treaty nations. It knew also of its power to subject the entry of foreign ships to conditions, from the frequent citation within the legislative halls of *Wildenhus's Case*, 120 U. S. 1, 11, where it is said:

It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes * * *.

The *Strathearn* was not a ship which entered a protecting harbor in distress. Nor was it a public vessel

of a friendly sovereign, consent to whose entrance may be implied. *The Exchange*, 7 Cr. 116. Neither is the matter one of the imposition of a criminal penalty for a completed act committed abroad which is sought to be imposed upon a person who happens by chance subsequently to come within the jurisdiction of the court. The *Strathearn* shipping articles looked to entry at Newport News, Va. The vessel came voluntarily in the course of trade and with knowledge of the condition imposed by the statute.

It is of course unnecessary that Congress label its enactment with the words "This is a condition." It is plain enough from the terms used. This is set at rest by the cases of the *Oceanic Steam Nav. Co.*, *supra*, and the *Bark Eudora*, *supra*.

In *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320, the statute was section 9 of the act of March 3, 1903, c. 1012, 32 Stat. 1213, as follows:

That it shall be unlawful for * * * the owner, master, agent, or consignee of any vessel, to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall

pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars * * *

The steamship company sought to recover the fine imposed by the Secretary of Commerce and Labor, which it had paid under protest. The court recognized as apparent that the power to impose the fine was lodged with the Secretary only for acts performed abroad, namely, the want of competent medical inspection at the point of foreign embarkation, together with the subsequent entry of the vessel within our territory. The court upheld the fine as lawfully imposed and said (p. 342):

In view of the absolute power of Congress over the right to bring aliens into the United States we think it may not be doubted that the act would be beyond all question constitutional if it forbade the introduction of aliens afflicted with contagious diseases, and, as a condition to the right to bring in aliens, imposed upon every vessel bringing them in, as a condition of the right to do so, a penalty for every alien brought to the United States afflicted with the prohibited disease, wholly without reference to when and where the disease originated. It must then follow that the provision contained in the statute is of course valid. * * *

The Court made a similar holding in *Patterson v. Bark Eudora*, 190 U. S. 169. The statute there involved was section 10 (a) of the act of December 21, 1898, c. 80 Stat. 755, 763, which provides that it shall be, and is hereby made, unlawful to pay any

seaman wages until he has actually earned the same and adds "(f) That this section shall apply as well to foreign vessels as to vessels of the United States." The Court said (p. 178):

The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which these vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as to domestic vessels. Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with.

4. The statute declares a rule of policy of the forum forbidding the enforcement of such contracts.

With reference to the validity of contracts, various rules have been applied. The governing law has been held to be that of the place of contracting (*Scudder v. Union Bank*, 91 U. S. 406); that of the place of performance (*London Assurance v. Companhia de Moagens*, 167 U. S. 149); of the place which the parties choose (*Liverpool & Great Western Steam Co. v. Insurance Co. of North America*, 129 U. S. 397, 458). But whatever may be the correct

rule in this respect, it is settled law that a court is not to recognize and enforce an obligation when to do so is contrary to the public policy of the forum.

A recent statement of this rule was made by Mr. Chief Justice White in *Bond v. Hume*, 243 U. S. 15. Suit was brought in Texas in connection with the sale on defendant's account of cotton for future delivery upon the New York Cotton Exchange. The contract was valid in New York. A statute of Texas, which made criminally punishable the dealing in futures except under certain conditions, was held not to cover the particular case. The Chief Justice, delivering the opinion of the Court, said (p. 21):

* * * It is equally rudimentary that an independent State under that principle will not lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, would lead to disturbance and disorganization of the local municipal law, or in other words, violate the public policy of the State where the enforcement of the foreign contract is sought.

The rule does not depend at all upon the "consensus of morals," as the courts below seemed to hold (R. 392, p. 32; R. 394, p. 49). In *Union Trust Co. v. Grossman*, 245 U. S. 412, it was held that the courts of Texas were not required to enforce contrary to the policy of Texas a promissory note executed in Illinois, whereby a wife domiciled in Texas guaranteed a husband's contract. Counsel had unsuccessfully contended "that the

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act to be refused life must be vicious, or unjust, immoral * * *, something inherently bad in it, shocking to one's sense of right—in the judgment of the courts, something pernicious and noxious to the public welfare" (245 U. S. 414).

The Kensington, 183 U. S. 263, a contract made in Belgium, valid by the law of Belgium, limiting the right of recovery for loss of baggage to an arbitrary amount, was held unenforceable in the courts of this country, and damage awarded for the full value of the baggage injured. This court said (p. 269):

As, however, the ticket was finally countersigned in Belgium, and one of the conditions printed on its face provides that "all questions arising hereunder are to be settled according to the Belgium law, with reference to which this contract is made," it is insisted that such law should be applied, as proof was offered showing that the law of Belgium authorized the conditions. The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it.

Whether or not a release to a common carrier liability for negligence is valid is not a question of moral turpitude. *Fonseca v. Cunard Steam-*

ship Co., 153 Mass. 553. As was further said in *The Kensington*, 183 U. S. 263, p. 270:

Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offence against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion.

The existence of the policy may be determined from decided cases and general principles. *Oscanyon v. Arms Co.* 103 U. S. 261. It may, however, be declared by legislative act. As said by Mr. Chief Justice White in *Bond v. Hume, supra*, 243 U. S. 15, 22, 23:

And finally it is certain that as it is peculiarly within the province of the law-making power to define the public policy of the State, where that power has been exerted in such a way as to manifest that a violation of public policy would result from the enforcement of a foreign contract validly entered into under a foreign law, comity will yield to the manifestation of the legislative will and enforcement will not be permitted.

Indeed, this court has always recognized the peculiar province of the legislature to declare the existence of a rule of public policy. In *Knott v. Botany Mills*, 179 U. S. 69, the public policy was settled by the Harter Act. In that case bills of lading signed at

enos Aires exempted the carrier from liability for negligence of the master of a British vessel. A suit was filed to recover for damage caused by negligence and the point was raised that the statute did not govern foreign vessels transporting merchandise from foreign ports under bills of lading issued abroad. The exemption clause of the contract was held unenforceable, and the court said (74): "The power of Congress to include such clauses in this enactment cannot be denied in a court of the United States."

It can hardly be doubted that the Seamen's Act declares the public policy controlling the present case. The legislature did not content itself with providing that section 4 "shall apply to seamen on foreign vessels while in harbors of the United States," but added, that the rule for the forum might not be mistaken, "and the courts of the United States shall be open for its enforcement."

Whether the obligation created by foreign law is to be called contract or tort, the public policy of the United States may require the United States courts to enforce the obligation not at all or only partially. Enforcement of a foreign obligation partially, that is, where certain terms are disregarded, has just been mentioned. The substance of the obligation under foreign law, in the cases of the *Kensington* and the *Botany Hills*, was to pay only a certain amount of damages. This arose from the acts in performance of a shipping contract. The clauses, and only those clauses, which were contrary to the public policy of the United

States were refused recognition. The rest were enforced. In cases like the present, so much of the foreign contract as provides that the seamen shall not be paid in ports of the United States may be disregarded as opposed to our national interest and the contract otherwise enforced.

The courts may indeed disregard the entire contract, and recognize the fact of services performed by the seamen, and the corresponding obligation on the part of the master to pay. *Cuba R. R. Co. v. Crosby*, 222 U. S. 473, 478. It would be proper in such case to adopt the contract price as the measure of the value of the services, it being the only evidence. *Clark v. United States*, 95 U. S. 539, 543.

There is, moreover, recent precedent for allowing less than the full value of the services to be recovered. In *The Titanic*, 233 U. S. 718, it was held that Congress may limit the extent of recovery in a court of the United States for an obligation incurred under foreign law. "It is true," said Mr. Justice Holmes, delivering the opinion of the court, "that the foundation for a recovery upon a British tort is an obligation created by British law." He continued:

(p. 732.) But it also is true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose. *Cuba Railroad Co. v. Crosby*, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed. 647. It is competent therefore for Con-

gress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler v. Boston & Savannah Steamship Co.*, 130 U. S. 527.

5. **There is no question of validity with respect to contracts executed between foreign seamen and foreign masters within the United States.**

Although the first question certified broadly refers to the validity of the entire section, it is presumed that no serious question of constitutionality is presented with reference to contracts of employment on American or foreign vessels which are entered into in the United States. See *St. Louis, Iron Mountain, etc., Ry. v. Paul*, 173 U. S. 404; *Knoxville Iron Co. v. Harbison*, 183 U. S. 13; *Dayton Coal & Iron Co. v. Barton*, 183 U. S. 23; *Chicago, B. & Q. R. R. Co. v. McGuire*, 219 U. S. 549, 570; *Erie Ry. Co. v. Williams*, 233 U. S. 685; *Patterson v. Bark Eudora*, 190 U. S. 169.

Moreover, wage contracts of seamen have long been subject to special regulations for their benefit. The act of 2 Geo. II, c. 36, perpetuated by 2 Geo. III, c. 31, required the shipping articles to specify two points, wages and the voyage.

The first Congress of the United States required a shipping agreement, and provided that the seaman should be entitled to one-third of the wages due him at every port where the ship unloads or delivers cargo, unless the contrary be expressly stipulated in the

contract. Act of July 20, 1790, c. 29, 1 Stat. 131. Revised Statutes, sec. 4530, carried forward these provisions. It was amended by section 5 of the act of December 5, 1898, c. 28, 30 Stat. 756, so that the seaman became entitled to one-half instead of one-third of the wages due. This statute was the immediate forerunner of section 4 of the Seamen's Act of 1915. See also Revised Statutes, Title LIII, chapter 3, sections 4523, 4525, 4529.

The reasons that have influenced in this respect legislatures and the courts of admiralty were well stated by Lord Stowell in *The Minerva*, 1 Hag. Adm. 347, 355, as follows:

On the one side are gentlemen possessed of wealth, and intent, I mean not unfairly, upon augmenting it, conversant in business, and possessing the means of calling in the aid of practical and professional knowledge. On the other side is a set of men, generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of procuring useful information, and almost ready to sign any instrument that may be proffered to them; and on all accounts requiring protection, even against themselves.

One means of imposition commonly practised upon seamen is to keep them without pocket money.¹

¹ For instance, upon the seaman's request for a few dollars in port he is referred to the ship's tailor or bumboat man. He signs up with the tailor for an article of clothing, charged to him at \$5 and receives \$2. The balance is divided between the master and the tailor. See document filed with the Certificate in this case, entitled "American Seamen," p. 12.

Section 4 was designed to relieve the seaman from his immediate necessities, and in this respect is analogous to the truck act sustained in *Knoxville v. Harbison*, 183 U. S. 13; and the weekly cash payment statute sustained in *State v. Brown & Sharpe Mfg. Co.*, 18 R. I. 16. The requirement that the master only pay one-half of the wages earned by the seaman, and unpaid to him, is not an unreasonable hardship.

THE TALUS.

I.

Section 11, proviso (e), was designed to prohibit the allowance of credit in the United States courts for advances made to foreign seamen in foreign ports.

1. The section is part of the legislative project to aid the American merchant marine.

In this case questions similar to those raised in that of the *Strathearn* are presented. Section 11 of the Seamen's Act is involved, which prohibits the payment of wages to seamen in advance of the time in which they have been earned.

The Seamen's Act must be regarded as a whole. Though at first blush unrelated, section 11, more particularly paragraph (e) thereof, which provides "That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States * * *," is cognate with section 4.

The legislative project in the latter section, which was to raise the wage cost of foreign vessels entering our ports to equal those of competing American vessels, is dependent upon the efficacy of the plan to provide the seaman with pocket money; and is entirely thwarted if by a contract made abroad the seaman can be altogether deprived of the right to receive earnings in our ports. The facts of the present case are sufficient illustration. The seamen were advanced just enough in England so that if the advances

are counted, together with other subsequent payments, no money whatsoever would be payable even under the half-wage provision of section 4. The proviso to section 11, in paragraph (e), covering foreign vessels, was designed to meet this situation.

When the 63d Congress came comprehensively to deal with the laws relating to shipping and seamen, it found legislation on the books against the system of advance payments.

The advance or allotment note is the key to the crimping system, whereby seamen are deprived of their earnings and kept in continual state of dependence. A crimp is defined in the Standard Dictionary (Funk & Wagnalls, 1905) as—

One who decoys people to a place where they are robbed, swindled, or impressed into the army or navy, or otherwise wrongly treated.

Naut.—An extortionate man who preys upon sailors;

and by Webster's Dictionary (1890) as—

A keeper of a lodging house where sailors and emigrants are entrapped and fleeced.

An insight into the methods by which the crimp operates is furnished by the testimony taken in an investigation conducted by the Bureau of Navigation, and set forth in the Annual Report of the Commissioner of Navigation for 1903, as follows (p. 37):

* * * One witness, a boarding-house keeper, thus testifies as to the bonus: "Some years ago when shanghaiing was carried on at this port,

twenty or thirty years ago, a man would be drugged or knocked down and shanghaied put on board ship in an insensible condition sometimes covered with blood. In this manner the premium paid for the furnishing of men became known as blood money, but since business is now conducted in a more respectable manner, and the shanghaiing of men is practiced as formerly, the premium has been termed "bonus."

The Commissioner's Annual Report for 1895 states (pp. 33-34):

If the seaman were in fact fully capable of entering into a contract his adequate protection would rest with himself. * * * The whole theory of maritime law, not only of the United States but of all other maritime powers, is that the seaman is the native of the nation, incapable, without the advice and protection of government, of entering into contracts. The theory doubtless corresponds with an historical and present fact. * * *

Of the allotment note to the "original contractor" it may as truly be said as of the British advance note that it "is one great cause of the deterioration of our seamen; without it the crimp's occupation would be gone; there would be no inducement for him to get worthless scamps to sign articles. He now signs these men for the advance note alone, and the man gets little or no benefit from it."

"The seaman is thus in debt to the ship from the outset of the voyage. One strong inducement to good conduct, the earning of

wages, is removed, and for it is substituted an inducement to desertion, his debt to the ship. The conditions of his shipment tend to create an almost continuous state of debt, which carries with it dependence, if not mendicancy, at home and abroad, dissatisfaction and resultant disregard of discipline, to which, it is believed, may justly be charged, in part at least, the disappearance of the American seaman. * * *

Frequently the crimp operates in league with the master of the vessel. The seaman applying for work on board ship is refused employment and referred to the crimp. Upon application to the latter for an assignment of his wages yet unearned, the sailor is then made a part of the crew. The crimp and the master divide the advance money. Such a procedure, in part at least, is reflected by the record in the *Rhine* and *Windrush* (*supra*, p. 8).

Judicial notice was taken of the system in the *Patterson* case, *supra*, 190 U. S. 169, 175, as follows:

The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages.

The unconscionable character of the agreements under which the advance note is signed, in view of the necessities of the seaman and the traditional guardianship over him by the court, is in many in-

stances so great that admiralty courts refuse to enforce the agreement in absence of legislation. See *The Eclipse*, 53 Fed. 273, 275; affirmed 60 Fed. 105; *Metcalf v. Weld*, 14 Gray 210, 213.

It was because the viciousness of the crimping system is wrapped up with "advances," that the legislature prohibited all such disposition of unearned wages, by section 10 of the act of June 26, 1884, c. 121, 23 Stat. 53. The act was amended by act of June 19, 1886, c. 421, 24 Stat. 79, section 3 of which permitted assignments of future wages to "original creditors." The "original creditor" loophole was largely closed by section 24 of the act of December 21, 1898, c. 28, 30 Stat. 755, which was sustained as constitutional in the *Patterson* case. The criminal penalty was increased by act of April 26, 1904, c. 1603, 33 Stat. 308.

Thus, on March 4, 1915, when the Seamen's Act was passed, the payment of such advances in this country was already criminally punishable. It had been settled, moreover, by the *Patterson* case that it was no less so because made by foreign masters to foreign seamen, even though the particular advance was free from extortion. See *Otis v. Parker*, 187 U. S. 606; *Purity Extract Co. v. Lynch*, 226 U. S. 192, 201; *Mutual Loan Co. v. Martell*, 222 U. S. 225; *Heller v. Lutz*, 254 Mo. 704. Therefore, if only advances made in the United States were meant to be treated as invalid in libels for wages, it was unnecessary to provide, in addition to the criminal penalties, that such advances should not be recog-

nized as defense. Yet in addition to the criminal penalty, all-embracing language is used as follows:

(a) * * * The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel suit or action for the recovery of such wages.

The terms "in no case" include advances wherever made. To give them effect, they must be deemed to cover advances made abroad, which the criminal provisions do not reach. But to make sure that the provisions with reference to the civil remedy should cover advances made abroad by vessels later entering our ports, Congress in the act of 1915 framed paragraph (e) so as to read "this section shall apply as well to foreign vessels *while in the waters of the United States* as to vessels of the United States," adding the italicized words to the existing law.

Thus again it appears that the welfare of the seaman is remarkably interrelated with that of the merchant marine. The main paragraphs of section 11 afford protection for the seaman, and are an effort to secure his wages earned and his consequent financial independence. The proviso in paragraph (e) of the section operates to aid American shipping by refusing to recognize as valid the attempt to deprive the seaman brought into our ports of one-half of the wages he has earned; so that he may have

opportunity to seek other employment, foreign vessels will have to hire new crews at the current port rate, and their wage cost will become equal to that of domestic vessels. That this was the legislative purpose is further shown by consideration of the legislative history.

2. The legislative history of the act shows the intent to cover advances made abroad.

The question whether advances made abroad should be a defense in libel suits for the recovery of the seamen's wages in our courts was a sharp issue in the legislature. Amendments seeking to limit the operation of section 11 to advances made in this country were proposed, and were adopted by one branch of the legislature, only finally to be definitely rejected.

In the 62d Congress, 2d session, opposition to paragraph (e) had developed on the ground that the language did apply to contracts made abroad. An amendment was offered by Mr. Humphrey, who proposed to limit the proviso "to any agreement made in American ports." This was withdrawn but a further proviso adopted, as follows: "That treaties in force between the United States and foreign nations do not conflict" (48 Cong. Rec. 9665, 9666), which would have had the effect of excluding from the operation of the section the vessels of those nations with which we had treaties providing that matters of wages be settled according to the laws of the nations before the consular agents.

In the 62d Congress, 3d session, the Senate committee reported a substitute bill, of which section 12

(section 11 of the present law) was an amendment to section 24 of the act of December 21, 1898. 49 Cong. Rec. 4568. Paragraph (e) of the committee substitute was as follows:

That this section shall apply as well to seamen engaged in ports of the United States for service on foreign vessels as to seamen employed on vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty as the master, owner or agent of a vessel of the United States would be for a similar violation.

The Senate amendment was adopted by the legislature in that form (49 Cong. Rec. 4588, 4801, 4806), the bill was presented to the President (49 Cong. Rec. 4854), but not signed.

If the act as finally passed March 4, 1915, had retained the language quoted, then unquestionably only advances made in American ports would be covered. But it was stricken out.

In the 63d Congress the same opposing interests clashed. The bill which passed the House limited the effect of the section upon foreign advances by the proviso "that treaties in force between the United States and foreign nations do not conflict herewith," like that adopted by the 62d Congress, 2d session. But this restrictive proviso was finally removed in conference (Report No. 1439, 52 Cong. Rec. 4639); and section 16 expressly required the abrogation of any treaty provision in conflict with the act. The

express abrogation, since unnecessary (*Whitney v. Robertson*, 124 U. S. 190, 194), is itself evidence of congressional intent.

The opposition voiced by Mr. Burton throughout the 63d Congress as in the preceding Congresses, was on the ground that section 10 (e) did refer to foreign contracts between foreigners. 52 Cong. Rec. 4741.

On the motion to reconsider, Mr. Burton restating the grounds of objection, referred to the bill presented by him which contained the limiting language "so far as they relate to the engagement of seamen in the United States" and continued (52 Cong. Rec. 4819):

The last portion is significant. That was in the bill which passed the House and Senate in 1913; it was in the bill as recommended by the Committee on Commerce, expressly in the most distinct language limiting the operation of this law to the engagement of seamen in the United States. This last line is left out in this conference report, and I presume it is left out with a purpose.

Congress therefore imposed this condition upon the entry of foreign ships into our ports after its attention had been specifically directed to the point.

8. The fact that advances made in this country are criminally punishable is not sufficient reason for enforcing foreign advances in this libel for wages.

The burden of the opinion of the Circuit Court of Appeals is that Congress intended its direction with reference to the allowance of credit for advance

wages in libel suits to cover only those advances for which criminal penalties may be imposed (R. 31).

Apart from what has just been said as to the intention of Congress, the criminal provisions are wholly separable from those here important. Upon this point, the case of *Knott v. Botany Mills*, 179 U. S. 69, which is not mentioned in the opinion of the Circuit Court of Appeals, is a precise precedent. The Harter Act under consideration in the *Knott* case, not only nullifies exemption for negligence contained in a bill of lading on vessels engaged in the foreign trade, but also imposes a criminal penalty for refusal to issue bills of lading of the proper character. It was held that under the Harter Act the clause exempting a British carrier from liability for negligence was without effect, although the bill of lading was signed in the Argentine. In the opinion it was stated (p. 76):

It was argued that this provision imposing a penalty would cover a refusal to give a bill of lading without the clauses prohibited by the first section; and could not extend to acts done in a foreign port out of the jurisdiction of the United States. But whether that be so or not (which we are not required in this case to decide); it affords no sufficient reason for refusing to give full effect, according to what appears to us to be their manifest meaning, to the positive words of the first section. * * *

In *United States v. Twenty-five Packages of Hats*, 231 U. S. 358, a libel was sustained which sought to

forfeit certain imports on account of the fraud of foreign consignors. The court stated (p. 361):

It was argued that the goods could only be forfeited for the same acts that would support an indictment, and inasmuch as the consignor could not be prosecuted here for making a false invoice in a foreign country, neither could the goods be forfeited for the same conduct in the (p. 362) same place. But while punishment for the crime and forfeiture of the goods will often be coincident penalties, they are not necessarily so, nor is there any inconsistency in proceeding against the *res* if the wrongdoer is beyond the jurisdiction of the court. The very fact that the criminal provision of the statute does not operate extra-territorially against the consignor, would be a reason why the goods themselves should be subjected to forfeiture on arrival here.

Whether the criminal penalty could be imposed upon a foreign master entering our ports after having given an advance abroad is a question not involved in the present case. It is not altogether clear, however, that it could not. In *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320, a criminal penalty was enforced against the shipowner for bringing immigrants to our shores with a disease which could have been detected by examination abroad, on the theory that the penalty attached as a condition of entry of the vessel. See also *United States v. Nord Deutscher Lloyd*, 223 U. S. 512.

In any event, the provision of criminal penalty for advances made here shows only the more clearly

the policy against them. Both criminal and civil provisions should be enforced so far as jurisdiction obtains. For acts committed here, punishment may be imposed. But in the civil suit the advance may be disregarded, wherever it is made. Indeed, as has been said, to give effect to the separate provision as to libels for wages, it is to be presumed that its operation goes beyond cases reached by the criminal clauses.

II.

Section 11 offends no provision of the Constitution.

1. It imposes a condition of entry by foreign trading vessels into American ports.

It is submitted that Congress did in the present case what the Circuit Court of Appeals below said it might do (R. 30, 31):

Congress might have treated it by imposing as a condition upon the entry to and clearance from American ports of both foreign and domestic vessels, that all advances, which were made to seamen in a foreign port before the voyage began, should be agreed by the ship to be disregarded in settlements required by the law to be made with seamen in the ports of this country.

If section 4 is valid for the reasons previously set forth, section 11 is also valid and for like reasons. No property of the foreign master is taken away without due process of law, for he has no property or contract right to enter American ports for the purposes of trade and disregard the attendant condi-

tions. He must be deemed to have known and consented to the terms of the statute when he came into the port of Mobile on February 22, 1917.

2. Enforcement of the foreign contract is not required when it is contrary to the public policy of the forum.

This proposition has already been discussed in the case of the *Strathearn*. As was said by Mr. Chief Justice (then Mr. Justice) White in *The Kensington*, 183 U. S. 263, 270, "The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion."

THE RHINE (No. 393) AND THE WINDRUSH (No. 394.)

I.

Section 11 requires that in a libel for wages against an American vessel advances paid by the American master abroad shall not be treated as valid.

1. This was the intent of the legislature.

Consideration of the Seamen's Act as a whole shows that it was designed to put American and foreign ships on an equality with reference to wages. The cases of the *Rhine* and the *Windrush* stand or fall with that of the *Talus*. It is submitted that if an advance made abroad by a foreign ship is to be treated as invalid in a civil suit in the courts of the United States, a similar advance made abroad by an American ship also should be so treated.

(a) No inconsistent prior executive or judicial construction was adopted by the legislature.

The majority of the Circuit Court of Appeals based the decision primarily on the ground that Congress intended to adopt the executive and judicial construction which had been placed on the language of section 11 to the effect that advances in foreign ports were not prohibited. *The State of Maine*, 22 Fed. 734; Consular Regulations. See R. 7. It is submitted that the rule of prior executive and judicial construction is not applicable for various reasons.

The rule is not arbitrary. It affords a presumption operative in absence of countervailing evidence, but is of no avail where the true legislative intent

otherwise is manifest. "It is not allowable to interpret what has no need of interpretation." *United States v. Graham*, 110 U. S. 219, 221.

In the present case the environment in which the act was passed and the legislative history demonstrate the intent to cover all foreign-made advances by vessels, foreign and domestic, coming into our ports. The prime purpose to aid the merchant marine is otherwise defeated.

The act of 1915, moreover, amended the statute which had previously been construed, by words designed to do away with any previous misconception. The original act prohibiting advances, act of June 26, 1884, c. 121, 23 Stat. 53, sec. 10, which was construed in *The State of Maine*, provided as follows:

This section shall apply as well to foreign vessels as to vessels of the United States; and any foreign vessel the master, owner, consignee, or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States.

The language of the act of 1884, therefore, looked to agreements made in the United States and clearances from our ports thereafter. It was so held in *The State of Maine*, 22 Fed. 734, and the ruling was made the basis of the consular regulation.

The act of 1884 was amended by act of June 19, 1886, c. 421 sec. 3, 24 Stat. 79; by act of December 21, 1898, c. 28, sec. 24, 30 Stat. 755; and act of April 26, 1904, c. 1603, sec. 1, 33 Stat. 308.

The Seamen's Act of 1915 added the words "while in waters of the United States" to qualify the words "foreign vessels." Thus, the validity of the advance by foreigners abroad was not sought to be affected, but only its recognition and enforcement in libels for wages in our courts against foreign boats which come into our waters. By omitting the qualifying words with reference to "vessels of the United States," the actual validity of the advance made abroad by American masters was, however, touched.

Reflexly, in the light of the prime purpose to put domestic and foreign vessels on equality as to wage costs so far as possible, the purpose to make the condition of entry to foreign boats in our ports as contended in the case of the *Talus* is disclosed.

Although the purpose of the act of 1915 is so clear that the correctness of the decision in the case of *The State of Maine* is immaterial, it may not be amiss to note that the decision in that case, if relevant, is open to serious question. It disregards the settled principle that the law governing the shipment of seamen abroad is the law of the flag. It disregards the requirement of Revised Statutes, section 4517, that the engagement of seamen in foreign ports shall take place before a consular officer, and that "the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements * * *."

The language of Mr. Justice Brown in *Houghton v. Payne*, 194 U. S. 88, 100, is peculiarly appropriate:

A custom of the department, however long continued by successive officers, must yield to the positive language of the statute. * * *

While it might well happen that by reason of the relative unimportance of the question when originally raised a too liberal construction might have been given to the word periodical, we cannot think that if this question had been raised for the first time after second class mail matter had obtained its present proportions, a like construction would have been given. * * *

2. The statute is valid.

Congress may impose in its discretion conditions upon the entry into American ports of American vessels as well as of foreign vessels. The citizen has no more vested right to engage in foreign trade without regard to legislative conditions, than the foreigner. *Butfield v. Stranahan*, 192 U. S. 470; *Weber v. Freed*, 239 U. S. 325.

The courts, moreover, may apply the national law to determine the validity of contracts made abroad between seaman and master on national vessels. This was recognized in *The Belgenland*, 114 U. S. 355, a case of a collision between a Norwegian and a Belgian ship. The court said (p. 364):

In the absence of such treaty stipulations, however, the case of foreign seamen is undoubtedly a special one, when they sue for wages under a contract which is generally

strict in its character, and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the ship-owners as well as those of master and crew, as well when the ship is abroad as when she is at home.

It has been pointed out that "the crew of a merchant ship lying in a foreign port is unlike a collection of isolated strangers travelling in the country; it is an organized body of men, governed internally in conformity with the laws of their state, enrolled under its control, and subordinated to an officer who is recognized by the public authority." Hall International Law, 6th ed., p. 199.

Frequently by treaty it is expressly provided that the national law shall apply in wage matters. See *Wildenhus's Case*, 120 U. S. 1, 11; *Tellefsen v. Fee*, 168 Mass. 188. In absence of treaty the law of the flag is commonly permitted to govern. See *The Elswick Tower*, 241 Fed. 706; *The Pendergast*, 29 Fed. 127; *The Leon XIII*, 8 Prob. Div. 121.

The statutes of the United States have regulated the payment of wages by American vessels to American seamen in foreign ports from the beginning. The act of July 20, 1790, c. 29, 1 Stat. 131, sec. 6, requires the master to pay the seaman one-third of his wages due at every port where the ship may unload cargo. Sec. 15 of the act of June 7, 1872, c. 322, 17 Stat. 262, carried forward as R. S. sec. 4517, requires masters of United States merchant ships to

engage seamen outside of the United States in the presence of the consular officer. The Revised Statutes, Title LIII, referring to merchant seamen, contains several similar sections. Sec. 4580 provides that the seaman may apply to a consular officer for discharge and obtain three months' extra wages if he is entitled to a discharge under an act of Congress or general principles of maritime law, while sec. 4581 imposes a penalty on a consular officer abroad who does not collect the extra wages for the seaman. See for other examples, secs. 4577, 4578, 4582.

Exercise of extraterritorial jurisdiction over citizens other than seamen is not infrequent (for examples see *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356), though usually the Nation acts only in this regard in matters affecting the national interests. See act of January 30, 1799, c. 1, 1 Stat. 613, now section 5 of the Penal Code, c. 321, 35 Stat. 328; and *United States v. Craig*, 28 Fed. 795, 801.

Transactions on board a ship of American registry on the high seas would no doubt be governed by American law; *The Hamilton*, 207 U. S. 398, 403; and although a vessel is frequently called a detached floating island, the case is in truth an example of extraterritorial jurisdiction. *Scharrenberg v. Dollar Steamship Co.*, 245 U. S. 122, 127. In *United States v. Rodgers*, 150 U. S. 249, it was held that the United States courts have jurisdiction to try a person for assault with a dangerous weapon committed on a vessel belonging to a citizen of the United States

when the vessel was in the Detroit River within the territorial limits of Canada.

It is not urged that the American law applies exclusively to transactions aboard ship. With reference to police regulations of the port, port charges, and criminal matters affecting the peace and order of the community, the local law usually is enforced. The Argentine Republic would have the power, moreover, to apply its law in its courts with reference to payment of advances. See *Patterson v. Bark Eudora*, 190 U. S. 169, 178, where the court said:

It is not pretended that this Government can control the action of foreign tribunals. In any case presented to them they will be guided by their own views of the law and its scope and effect, but the courts of the United States are bound to accept this legislation and enforce it whenever its provisions are violated.

But although the principle is not universally accepted (see Hall Int. Law, 6th ed., p. 202), the South American Republic would probably, as a matter of comity, adopt the rule which our courts follow in absence of statute and leave matters of wage relations to be dealt with by our law. See Moore, Int. Law, vol. 2, pp. 286, 290, 295; *Brown v. Duchesne*, 19 How. 183.

It is immaterial that some of the seamen on the *Rhine* and the *Windrush* may not have been actually American citizens. For the purpose of the present cases they must be deemed to be so. *Ross's Case*, 140 U. S. 453, 479.

CONCLUSION.

1. The answer to both questions in the case of the *Strathearn* should be that section 4 is constitutional.
2. In the cases of the *Talus*, the *Rhine* and the *Windrush*, the decrees of the Circuit Courts of Appeals should be reversed and those of the District Courts affirmed.

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Attorney.

OCTOBER, 1918.



Supreme Court of the United States

OCTOBER TERM, 1918.

No. [REDACTED] 861

JOHN DILLON, Petitioner, vs. STRATHEARN STEAMSHIP COMPANY, Respondent, Claimant of Steamship *Strathearn*.

No. [REDACTED] 892

ERIK SANDBERG et al., Petitioners, vs. JOHN McDONALD, Respondent, Claimant of British Ship *Talus*.

No. [REDACTED] 393

PAUL NEILSON et al., Petitioners, vs. Sailing Ship *Rhine*, RHINE SHIPPING COMPANY, Respondent.

No. [REDACTED] 394

JOHN HARDY et al., Petitioners, vs. Barkentine *Windrush*, SHEPARD & MORSE LUMBER COMPANY, Respondent.

AMERICAN SEAMEN

BY HON. JOHN E. RAKER.

SILAS B. AXTHILL,
W. J. WAUGUESPACK,
ALEX HOWARD,
Proctors for Petitioners.

AMERICAN SEAMEN

EXTENSION OF REMARKS

OF

HON. JOHN E. RAKER
OF CALIFORNIA

IN THE

HOUSE OF REPRESENTATIVES

APRIL 30, 1918



WASHINGTON
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AMERICAN SEAMEN

EXTENSION OF REMARKS

OF

HON. JOHN E. RAKER.

American Seamen.

Mr. RAKER. Mr. Speaker, pursuant to the permission given me by the House to extend my remarks on "American seamen," I take this opportunity of presenting the five articles by Mr. Andrew Furuseth, president of the International Seamen's Union of America, explaining his point of view in regard to the manner of the growing American merchant fleet, and setting forth the conditions which, in his opinion, now operate to discourage the young American from following the sea as a means of livelihood.

These articles by Mr. Furuseth are as follows:

SEAMEN FOR OUR MERCHANT FLEET—ARGUMENT AGAINST REPLACING SKILLED SAILORS WITH NAVAL RESERVE MEN WHO ARE TRAINED LARGEY ON SHORE—PREDICTION THAT THE PRESENT SYSTEM WILL BREAK DOWN.

[By Andrew Furuseth.]

Sea power is in the seaman. Vessels are the seaman's tools. Tools always belong to the races or nations who can use them. No nation developed sea power unless it furnished the seamen from its own population. No nation ever long retained sea power after its men quit the sea. The United States can not become a power on the sea, commercially or otherwise, unless the American shall again become a seaman. And he must become a seaman in the real sense of the word. The sea, being in itself real, has little toleration of inefficiency or imposture.

"An able seaman is a skilled mechanic with great abilities. * * * On sailing vessels his place in calm and storm never can be adequately filled by the unskilled, however numerous, nor in steamships in emergencies." (Bullen's Men of the Merchant Service.)

The United States is in an emergency, and its vessels are subject to conditions which will try its seamen to the uttermost. And yet it is seriously proposed, nay, practically determined, that such skilled merchant seamen as available are to be replaced by men, nearly all of whom know nothing of the sea. Officers grown gray in service at sea are to be displaced by young men with a smattering of sea training and some theoretical knowledge of navigation.

The proposal ought to be rejected. If determined, the determination ought to be reversed. This ought to be done and done quickly, and for the following reasons:

(1) It would be a waste of man power. Experience proves that three times as many men are required to man a merchant ship when operated by naval men as when operated by merchant seamen. This is the record of ships taken over and operated by the Navy in this war. This increase is in the operating crews of the vessels, and is not due to the carrying of gun crews.

CALLED WASTE OF TONNAGE AND SKILL.

(2) It would be a waste of tonnage. The additional men must be furnished with accommodation for sleeping and living on board the vessels. Such accommodation can only be provided by appropriating the cargo space.

(3) It would be a waste of skill. The officers and men now sailing are highly skilled. The officers have been gradually advanced because of their skill and experience. A very large number of these officers would be lost to the service. Age and physical defects would prevent them from joining the naval reserve, and yet they are the most valuable men in the merchant marine, where such defects in no way interfere with the performance of their duties. The sailors were good, able seamen when this war began. For more than two years the majority of them have faced the submarine. Many of their shipmates have lost their lives. They know the danger. Many have been on vessels that were torpedoed, and have saved themselves and others in the boats.

It would be a high estimate to assume that 25 per cent of these highly skilled seamen could be utilized by the Navy as enlisted Naval Reserves. The 75 or more per cent ought not to be wasted because they can not or will not enter term enlistment.

(4) It would be a waste of loyalty. While more than 60 per cent of these men are not citizens of this country, and while they are subjects of neutral or allied nations, they are loyal to the United States. They were grown men and trained seamen when they came here. They owe this country nothing except gratitude for freedom conferred through the seamen's act. This gratitude is an impelling force. They are willing to continue sailing. They want to prove to the world that free seamen are better and more reliable than bond seamen. If their willing service be rejected in favor of men whom they know to be their inferiors in skill, these seamen will feel that they are not trusted. They will find other work. They will be lost to the sea.

QUESTION OF SAFETY RAISED.

(5) It would be unsafe. The Navy was, according to reports, some 18,000 men short when the war began. Allowing for a goodly number of men with previous service in the Navy returning, these would reason-

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ably be placed on the active fighting vessels—trai-sers and destroyers—and the merchant vessels will be manned by Naval Reserve men. While a few of these come from the merchant service, the great majority are directly from shore life or from that Sunday sailing called yachting—men who sailed on yachts without sailing them. They are in no real sense seamen. Men can not be made into seamen in training camps on shore. Seamen are not made in that way. Other nations have tried that in the past and have suffered from the failure. Experience has taught the men sailing that, so far, the best defense against the submarine is speed in the vessel and skill in the crew.

(6) It is unnecessary. There are now more than 6,000 certificated masters and chief mates, and original licenses are being issued to third and second mates at the rate of about 70 a week.

According to the report of the Commissioner of Navigation, there are on the ocean, under the United States flag, about 2,500 vessels, sail and steam, of 100 gross tons or more. According to the report of the supervising inspector general, about 36,000 certificates have been issued to able seamen. This gives more than, or slightly above, 13 able seamen for each vessel. As a matter of fact, the average number of able seamen necessary to man these vessels would be seven. The large number of able seamen now employed on United States merchant ships arises from the fact that the shipowners have carried able seamen exclusively and have refused to carry ordinary seamen and boys.

If the vessels be manned as directed by the seamen's act, there are able seamen enough now certificated to furnish not only able seamen for existing vessels, but for all the vessels than can possibly be launched during the present year. If the boys and ordinary seamen had been carried as contemplated by law, we would now have more than 20,000 Americans on the sea partly able seamen and partly in training. The question is not are there enough officers and skilled seamen? But, are they willing to continue at sea, and are those not at sea willing to return? Are the Americans willing to come to the sea? We know that they are.

THE ORIENTAL SEAMEN.

Notwithstanding the fact that the Department of Commerce has construed the forecastle clause of the seamen's act as having no application to vessels built prior to November 4, 1915, and the housing in the old vessels is abominable, and notwithstanding the fact that the clause of the act which provides that 75 per cent of the vessel's crew in each department thereof must understand all orders has been so construed as to be inoperative and has permitted orientals and others unable to understand orders to continue sailing, yet since the seamen's act was passed the number of Native Americans sailing out of Pacific ports has increased from less than 1 to more than 10 per cent of the men sailing. And out of the Atlantic ports the increase has been from 10 per cent, when the act was passed, to 25 per cent at present. We know that the

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American will sail. As in the shipbuilding it is a question of wages, of treatment, of housing, and of the association to be endured. The American youth, however, will not sail with Orientals.

By order the seamen's union it was suggested to the Shipping Board that it would be possible not only to induce young men to come to the sea, but to induce men who have left the sea to return. Under the leadership of the Shipping Board the shipowners and the seamen of the Atlantic arranged for a specific wage for one year, for a bonus for going into the war zone, for the reorganization of the vessels' crews so as to require fewer able seamen and make place for young men to come and learn seamanship; it was further agreed that the shipowners, the seamen, and the Shipping Board should join in a "call to the sea," addressed to the young men and to those who have left the calling. This was perfected on August 8, 1917. The shipowners and seamen on the Pacific declared their willingness to join in the "call of the sea."

The seamen on the Lakes have been and are now willing. The shipowners, the Lake Carriers' Association, refused to cooperate, and give as their reason a fear that the men might become members of the seamen's unions. The call has not received the needed signatures and has not been sent out.

The convention of the seamen meeting in Buffalo during the first days of December unanimously adopted the following call coming from seamen to seamen:

"The Nation that proclaimed your freedom now needs your services. America is at war. Our troops are being transported over the seas. Munitions and supplies are being shipped in ever-increasing quantities to our armies in Europe. The bases are the ports of America. The battle fields are in Europe. The sea intervenes. Over it the men of the sea must sail the supply ships. A great emergency fleet is now being built. Thousands of skilled seamen, seafaring men of all capacities who left the sea in years gone by as a protest against the serfdom from which no flag then offered relief, have now an opportunity to return to their former calling, sail as free men, and serve our country.

"Your old shipmates—men who remained with the ship to win the new status for our craft—now call upon you to again stand by for duty. Your help is needed to prove that no enemy on the seas can stop the ships of the Nation whose seamen bear the responsibility of liberty.

"America has the right, a far greater right than any other nation, to call upon the seamen of all the world for service. By responding to this call now you can demonstrate your practical appreciation of freedom won."

All others being ready and willing to cooperate, surely there must be some way to induce the Lake Carriers' Association at least to forget

temporarily its absurd prejudices and to cooperate now for the benefit of the Nation.

The Shipping Board has manned the vessels controlled by it in accord with the arrangement, which is substantially in accord with the law. The shipowners have not thus far complied with this point of the agreement. If they had, we should now have about 15,000 young Americans at sea learning seamanship. For some reason it was not done. The months have been wasted on the ocean as they have been wasted on the lakes by the refusal of the lake carriers to cooperate, so that the young men sailing there could learn. As it now stands, the training school operated in Boston under authority of the Shipping Board is a necessity, and will be a success if the young men can be sent from that school to all kinds of merchant vessels, to serve as coal passers or ordinary seamen. The Department of Commerce has ample authority under existing law to reorganize the crews of all steam vessels. There can be no doubt that the owners of sailing vessels will cooperate. Thus we shall have an efficient and, gradually, an American personnel for the merchant marine during the war and after the war.

The Navy can not furnish men of sufficient skill. The system suggested will inevitably break down and will then leave the United States without seamen to carry on its needed ocean transportation, either during the war or after the war. When the war is ended the Naval Reserve men will go back to their shore employment. We shall then have vessels, no men, and very few officers. We shall again be driven from the sea commercially. We can have no sea power without national seamen. Sea power is in the seaman. Vessels are the seaman's tools, and the tools will always belong to the nation or race that can use them.

II.

FORCASTLES, THE PRISONS OF THE SEA—SELF-RESPECTING AMERICAN BOYS, BROUGHT UP IN DROUGHT HOMES, HAVE BEEN DRIVEN FROM OCEAN BY WRETCHED LIVING CONDITIONS—NEW LAW HALTED IN COURTS.

The share which any particular nation had in the use of and the power on the sea depended always on the number of its people who obtained their living by following sea occupations. Fishermen on the coasts, later on the banks, whalers, first in small boats along the coasts, later in large vessels following the whale or seeking him, trading in their own produce, or carrying the produce of others—these are merchant seamen. Valuable cargoes tempted others into piracy, and the merchant vessel was armed to resist the pirate. These were the early fighting vessels or men-o'-war. In all instances the men employed were seamen. Seamen were always considered a special part of the national defense.

To develop a large number of trained seamen, to foster and develop a tendency to the sea in the population, has ever been the care of statesmanship. Nations have fought over fishing grounds, not because of the fish to be caught, but the seamen to be trained in the use of those grounds. The increase in the trend to the sea has always been found to be identical with periods of national expansion, be that expansion in trade or in other directions. Any steadily decreasing trend to the sea has been a symptom of national decay. This does not mean a decay in wealth. That might be increasing while the vitality of the people was ebbing away. When, for one reason or another, the men of a nation ceased to seek the sea, and the nation had to seek its seamen from elsewhere, the decay in sea power began. If the trend from the sea was not checked and stopped, sea power passed away. The barest look into the histories of the Hansa League, of Venice or of Genoa, of Spain, or of Portugal, and of the Netherlands should convince anybody that sea power flows from the seamen.

The merchants of the Hansa League treated their seamen in such manner that the men and boys from either the united cities or their vicinity refused to serve. Desertions were punished by branding the deserter's face with a red-hot iron. Of course, desertions to some extent stopped; but so did the trend of the population to the sea. The keelhauling of the Dutch had as much to do, nay more to do, with the Dutch decay in sea power as the sea battles lost to England. Dangers and defeats never stopped the trend to the sea. It was harsh treatment, insufficient remuneration, and the feeling of failure to be able to follow the upward trend of society that checked the trend of any given people to the sea. Of course, all these things are comparative. The treatment and condition accepted as tolerable in one period will be felt as the rankest kind of injustice in another. The standard is changed.

SPAIN'S EXPERIENCE.

Spain, once all powerful on the sea, could not man the battleships which fought under her flag at Trafalgar. (Mahan, "Sea power in History.") The Spanish Armada is often said to have been overcome by the elements and the proud Phillip so declared; but Prof. James Anthony Froude in his lectures, "English Seamen in the Sixteenth Century," gives the true explanation. England was sending some of her best blood to sea, and her seamen so improved the rig and sailing qualities of their vessels that they "could work to windward with sails trimmed fore and aft." The foremast was changed into a jib boom; the aftermast into a spanker boom; fore and aft sails were put on them; the trusses were improved and the English vessels could fight under sail. "The English ships had the same superiority over the galleons which steamships have now over sailing vessels. They had twice the speed; they could lie two points nearer to the wind."

Favored by a brisk wind, they chose their own positions from which to use their guns. They had discarded the high forecastle and the high sterncastle and furnished a poor target for the slow Spanish vessels'

guns. The high freeboard of the Spanish galleons and their higher fore and after castles made them the best of targets for the English guns. It was better vessels, designed and handled by better seamen, that destroyed the Spanish armada. "It was to the superior seamanship, the superior qualities of English ships and crews, that the Spaniards attributed their defeat."

FRENCH AND ENGLISH FLEETS.

When the revolutionary wars opened the fleet of France was, in vessels, men, and guns, about equal with the English, but England could reman her vessels five or six times, while France could not do so once. France had to resort to landsmen, whom she trained in harbor until they could dismantle and rerig the vessels with remarkable speed, but after a gale at sea the vessels were like wrecks.

The English vessels might leave the harbor looking like wrecks, but after a couple of days at sea they were in the very best of trim and fitness.

For reasons so many that it would take too much space to mention them, sea power passed from those peoples. The most direct reason was the loss of seamen and failure to develop seamen of their own.

America had its full share of the world's carrying trade. The decline set in in the early fifties. The Civil War made it convenient to place the vessels under foreign flags, and much tonnage was lost, but if other false steps had not been taken and the Americans had remained at sea, vessels would have been replaced and the former status restored.

The thirteenth amendment was adopted. Slavery was abolished on land, on the sea it was continued. The seaman fought for the freedom of others; he failed to obtain it for himself. To become a seaman was to surrender all rights of citizenship, and the freedom-loving American boy refused to enter sea life. Through the crimping system the seaman was deprived of the wages earned, as he was of his freedom. The American who went to sea was compelled to live in the forecastle with men whose language he could not understand; he was compelled to accept wages upon which a family could not be sustained; the competition with all the world's derelicts set his wages, and when at sea he was compelled to do the work that the derelicts could not do. The American quit the sea and the vessels were manned by men from all the nations and all the races. When the seaman's act was passed America had practically no seamen of her own. We have very few now. We could by this time have had quite a large number of native seamen, but the act has not been given a chance to function, and the trend to the sea, which set in when the act was passed, has been checked by the failure to enforce it.

SEAMEN'S ACCOMMODATIONS.

One of the glaring evils that have kept the American from the sea is the accommodations on board vessels. They are called forecastles, and located so far forward as to interfere in the least possible way

with the cargo or passenger space. Seventy-two cubic feet per man. Twelve square feet on the floor or deck. It is usually an abominable disease-breeding place. Six feet high, 6 feet long, and 2 feet wide. "A little too large for a coffin, not large enough for a grave."

This space has come down to us from the old line-o'-battle ship. It is the space needed for slinging a hammock. Two, three, even four bunks are placed one above the other. The height between them makes it impossible to sit up in the bunks. You slide in and you slide out. The air necessarily becomes very foul, because the usual ventilation is through the door or through small round openings, which in bad weather must be closed to keep the water out. There are no provisions for cleanliness. The result is best expressed in the figure of the reports from the Surgeon General of the Marine Hospital Service. In years passed the number of men entitled to marine hospital relief were about 120,000, and the number receiving treatment was for years between 50,000 and 60,000, and these men were between the age of 18 and 45. There are very few seamen sailing before the mast above the age of 45.

In passing the seamen's act Congress provided that the space per person should be 120 cubic feet; that is, the width was increased from 2 feet to 3 feet and about 8 inches, with the further proviso that there must be at least 16 feet on the floor for each person and that there must be no more than one bunk above another. The act further provided for conveniences for keeping clean. These changes are very important in the modern steam vessel with the eternal soot, coal dust, and all the dirt and grease from the engines.

ACTION BY CONGRESS.

Congress took a law passed in March, 1897, and amended it so as to read that after the passage of the act the forecastles must be improved as above described. Congress gave the shipowners from March 4 to November 4 to comply with the act. The seamen very naturally thought that any vessels built after March 4, 1897, would be compelled to improve the forecastle. The Department of Commerce ruled that the law had no application to vessels built prior to November 4, 1915. The matter was placed before the President, who submitted the question of construction of the statute to the Attorney General. The Attorney General held that the new law applied to all vessels built after March 3, 1807. This was overruled by Judge Manton in New York. An appeal was taken to the circuit court of appeals, where the question is now under consideration.

In the meantime the old forecastle is unaltered. The dirt, the misery, and the sickness continue. No self-respecting American boy, brought up in an American home and school, will go into such a place, especially to live there with men whose language he can not understand and whom he rightly or wrongly considers his inferiors. When the court shall have passed upon this statute and shall have given to it the construction plainly intended by Congress, the forecastles and other evils that

stand in the way of the American going to sea will pass away. One rather remarkable fact is that nearly all European nations, especially the real maritime nations, have years since passed just such laws about improved accommodations for seamen on vessels as our Congress adopted in the seamen's act.

AN ILLUSTRATION.

Perhaps an illustration might be needed to cause the reader to understand this legal tangle about the forecastle. A municipality has permitted a certain kind of building to be erected. Experience teaches that these buildings are dangerous to health and to life. The law under which the buildings were erected is amended so as to compel more space, more doors, more fire escapes. The owners of the buildings insist that such law might apply to new buildings, but that it can not be made applicable to buildings already erected. If their contention is sustained the danger to health and life continues. There has been an improvement on paper, but none in fact. The cost of renovating the forecastles is in fact insignificant. It is the peculiar superstition about the extra sacredness of vessel property that seems to stand in the way.

The very first thing to do to get the American to sea and to keep him there is to give him—not the space for accommodation on the vessel that a prisoner gets in any modern prison, but about one-third of that and some little chance to keep clean. Physical cleanliness is known to promote mental cleanliness. You are asking the seaman to keep mentally clean, and he, at least the great majority of them, really wishes to; but he is compelled to live under conditions which are conducive neither to physical nor mental cleanliness nor to health. While this and other evils with which I shall deal later are permitted to continue, we need not expect the American to come to the sea or to remain there if need should drive him there. Let us have the seamen's act enforced and we shall have seamen and seapower.

III.

CRIME, SAILOR, AND HIS WAGES—SEAMEN'S ACT HAS HELPED TO GIVE PROTECTION AGAINST THOSE WHO PREY UPON THE INNOCENT SEAPAPER, BUT ABUSES STILL EXIST—A VITAL QUESTION PUSHING IN THE COURTS.

To crimp is "to decoy and detain for impressment, as sailors." There can be no crimping as long as the sailor is at all times free to quit his work while the vessel is in the harbor. The crimp decoys the victim into his house or the victim's need drives him there. The victim pawns his body for food or drink. The crimp makes arrangement with either the master or owner of the vessel to furnish sailors at a certain wage. The victim is compelled to accept the wages and go in the vessel selected for him by the crimp. He can get no other vessel. His necessity drives him.

The victim is signed on the shipping articles—shipping contract to labor on a vessel—the crimp delivers the victim and gets the advance

note or the money, and the Government through its laws and police power sees to it that the victim does not get away.

Section 2 of the seamen's act provides "that it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any person * * *." The statute then provides a criminal penalty; but recognizing that it is difficult to enforce penal laws, especially when as in the case of seamen the testimony is lost or unobtainable, because the witness has been left in some foreign country; the statute further provides a civil penalty by enacting "that the payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense in a libel suit or action for the recovery of such wages."

Workingmen on shore are compelled to organize, to strike, and to seek legislation to compel the employer to pay every week or every two weeks; the employer wants to keep the money as long as he can. He has some use for it. The bondage of the seamen makes it safe to speculate in his body—in his labor power—and the seamen had to seek for years to rid themselves of the incubus of having their wages paid before it was earned.

SAILOR'S WAGES EVAPORATED.

Prior to the enactment of the so-called White Act, an act passed through the efforts of Senator White, of California, in 1898, to improve the condition of seamen and to improve commerce, the advance paid was limited only by what the seaman might be expected to earn during the voyage. Thus, on a voyage from San Francisco to England—usually four months—the advance that the seaman was compelled to sign for was three months' pay. The seaman arrived in Liverpool with less than one month's pay after working four months. He then left Liverpool for San Francisco or Portland, Oreg., was again compelled to sign for three months' advance, to again arrive on the Pacific with less than one month's pay to take from the vessel. In neither case did he receive even one-quarter of the advance, either in money or any equivalent. The advance going from New York to England was usually one month's pay. The seaman, or the man called a seaman, arrived on the other side of the Atlantic with nothing to take from the vessel. He was compelled to go into a boarding house and again pawn his body.

Congress finally passed the law limiting the amount of "allotment to original creditor" to one month or less, and prohibited the advance altogether. Some shipowners violated the law in every way, and the prohibition against the payment of advance would have meant nothing but so much waste paper, except for the civil remedy.

Under the part of the law giving the seamen the opportunity to recover the wages regardless of and including the advance, the system

passed out of the coastwise trade, but not until the law had been tested in the Supreme Court. The court upheld the law, and in so doing used the following language in describing the advance:

"The story of the wrong done to sailors in the larger ports, not merely of this Nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless, and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

HOW THE SEAMAN WAS FLEECED.

Rapacious managing owners and masters of vessels knew well how to use the opportunity given them by the advance system. There were many managing owners of vessels who had regular contracts with the crimp to the effect that he was to pay part of the advance back to the owner for the privileges of furnishing their particular vessels with men at a specific wage. Sworn proof of this was furnished to the committees of Congress. Masters whose salaries were low felt that they had a perfect right to make what they could on the side, and they drove the sailors out of the vessel in order that they might share, first with the tailor in the wages which the deserter left behind, and then in the advance which the vessel paid to the crimp to furnish substitutes for the men driven out.

Some explanation may be needed at this point to explain the reference to the tailor. In practically all seaports there are so-called tailors who make a business of furnishing clothes to seamen. In all parts of the East this tailor is called a "bumboat man." The tailor, or bumboat man, obtains from the master the special privilege of selling clothes to the crew. The seaman is sent to that tailor to get what he needs. When the tailor has the man's signature at the bottom of a long bill, upon which but one or two items are enumerated, this bill can be filled out above the seaman's signature, and the man is ready to be driven out of the vessel. He is then driven out.

The bill is filled up to cover nearly all the wages due, the amount is divided as per agreement, the master certifies to the correctness of the deserter's tailor account, and the tailor collects when the agent of the vessel has the bill, properly certified, presented to him.

The American who had lived in an American home and attended an American school could, of course, not be induced to accept this kind of life. White men from anywhere refused to accept it, and the crews

of American vessels grew to be of a poorer and poorer quality—Greeks, Portuguese, and other South Europeans, mixed with West India Negroes—and sailed more for the money that might be made in smuggling than for the wages which they could earn and keep. Some of these men were fairly good seamen, some of them excellent seamen, and, aside from their smuggling, were decent enough men; but, of course, the American neither would nor could sail in that atmosphere. On the Pacific Chinese were employed. They had to be given a full right to run gambling tables and to smoke opium—some vessels had special rooms for this purpose. They smuggled anything from silk or opium to Chinese into this country.

The seamen's act was passed by Congress to get the American to come again to the sea. To accomplish this purpose the crimping had to be abolished. Simply to prohibit advances would lead nowhere. The system had to be made unprofitable. The managing owner, who knew all about the crimping and what an unscrupulous man might make out of it, would not continue to permit his shipmaster to break the law and pay advance if the advance had to be paid over again, and in the final instance to the seaman who had earned the money as wages. It was for such reasons that Congress prohibited the payment of all wages before they were earned, and further prohibited all allotments, except to near and dependent relatives.

A LONG-LIVED ABUSE.

Crimping, however, is a long-lived abuse, and is able to find many means to continue as long as the seaman's body belongs to the vessel. This became thoroughly understood by members of the Committee of the Merchant Marine and Fisheries, and especially by Mr. HARDY, of Texas, chairman of the subcommittee in which the seamen's bill was licked into the effective legislation for the building up of the sea power of America that it will prove itself to be when given the opportunity to effectuate.

Actually to destroy the crimping system the seaman had to be made a free man. He must be within his right, if he chooses to leave the vessel in any safe place, and he must have the right to draw at least half of the wages due him in any harbor. To prohibit advance and abolish imprisonment for desertion would not liberate the seaman in fact, unless he was permitted to collect a part of his earned wages. The seaman's physical needs would hold him to the vessel with a stronger grip than the threat of imprisonment. In a strange place, without acquaintances and unable to pawn his body for food, he could not live long enough to find some other vessel. The representatives of the ship-owners, especially the foreign shipowners, who appeared before the committee, knew this perfectly, and they were willing to abolish the imprisonment and the advance, but they protested most earnestly against any part payment of wages in ports.

With one-half of the wages earned and not paid being made payable in port, the seaman need not go to the tailor selected by the master;

he need not pay double or treble price for things that he wants; he will not be driven out of the vessel to make it possible for the master to collect part of the wages left behind, or for the purpose of the managing owner sharing in the advance supposedly paid to the substitutes. If no advances can be paid, and especially if any advances paid to crimpers must finally be paid to the seaman, who has actually earned it as wages, the whole system must cease.

The Department of Commerce, with a fatuous twist of mind that is almost incomprehensible, insists that advance may be paid by American vessels in foreign ports, and thus compels the seaman to enter suits for the recovery of his wages under the law. Up to the present all the district courts have sustained the law and have ordered the advance repaid, but this question is now on appeal in the Circuit Court of Appeals, and we shall see if the law is understood there. If the court will hold to the letter of the law and enforce it in letter and spirit, the shipowners will no doubt take it to the Supreme Court, and then we shall have the law nailed down again. We seamen fully expect that the owner, who evidently is reimbursed for his loss in paying the cost, fees, and the attorney's fees, will carry the case to the Supreme Court on the question of constitutionality or on the question of comity between nations.

Let the La Follette seamen's act, as it is sometimes called, be enforced and the American will again become a seaman. The American shipowner will have to meet only such competition as is fair and arises from skill in management. The impossible competition which arose from antiquated navigation laws and treaties that were fundamentally unconstitutional will pass away.

IV.

ENFORCING SAFETY AT SEA—SKILLED SEAMEN ARE NECESSARY IF SHIPS AND THEIR PASSENGERS ARE TO BE ADEQUATELY PROTECTED—HOW THE LAW REGARDS THE QUESTION OF TRAINING SAILORS.

"Bear in mind, when a ship is lost the shipowner may make a profit, the owner may get more than the value of his ship; the merchant may lose nothing, but may, and very often does, get more than the value of the cargo back. In the same way the underwriter averages his losses, and, on the whole, makes a profit on the insurance of the ship out of his premium."

The above is a quotation from one of England's great statesmen, Joseph Chamberlain, of Birmingham, and the utterance came when, as president of the board of trade, he sought to stem the downward trend in skill and safety in the merchant marine of Great Britain.

Skill is that coordination of mind, eye, and hands needed to do any difficult act or thing with speed and efficiency. It is the result of training, experience, and native adaptability. Some men learn some things quickly; other men can not learn the same thing at all. Skill in seamanship

ship is never attained except by experience and native ability or adaptability. In the young man of even the greatest adaptability it is a slow and at times a painful process. It is never acquired except at sea.

Let me suggest something by way of a kind of comparison. How long will it take to make a street-bred boy from New York sufficiently expert as a horseman to break a bronco? Suppose you try to teach him by drilling him in infantry tactics, or suppose you try to teach him by permitting him to ride a wooden horse. Now, please try to understand that when a boy goes to sea it is not the bronco that is to be tamed or broken. The antics that a vessel performs in an angry sea are even more diversified than the antics of the unbroken bronco, and yet the boy going to sea must get so accustomed to the antics of the vessel and the sea that he can stand on his feet, see with his eyes, think and determine with his mind, and execute the act determined and willed. He must be inured to the sea. He must learn to understand it and to work with it or there can be no safety for either the vessel or those on board.

THREE YEARS TO MAKE A SEAMAN.

Skill in seamanship is not a matter of a few weeks of intensive training, even if part of the training is done at sea. The lowest or shortest time accepted and made part of the law of any nation is three years. This is the standard set by English, Australian, and American law. It was part of the recommendation by a Norwegian commission instructed to investigate and report, and it is the time set by the German ship-owners under authority granted by German safety regulations and compensation laws.

When the shipowner was not protected by laws providing for limitation of liability to the traveler or his heirs, and when he was not, as now, covered by insurance of ship and cargo, when the loss of the argosy meant bankruptcy, he insisted upon real skill in the seaman. He then determined that four years of training was barely enough; he further insisted upon and obtained the right to reduce in rating and pay any inefficient man in accordance with his demerit.

Lack of skill in the seaman (sailor) was recognized as being dangerous to the vessel, the cargo, and passengers. It found no apologist, because all were equally interested and the shipowners had an especial interest, because his property was ever in danger. He had not, at that time, succeeded in transferring his risk—through insurance—to others, or in shedding his liability through the enactment of limitation of liability laws.

Skill necessarily presupposes a sufficient knowledge on the seaman's part of the language used by officers to understand orders without any interpreter or any explanations. There is no time for such at sea in an emergency. The safety of the vessel and hence of all on board depends on immediate obedience. Let me try to illustrate. Suppose your chief and his lieutenants, speaking English only, were to be given

a crew of men who could not understand English, and that the chief and his lieutenants were compelled to give their orders through an interpreter, how long would you people of New York stand that kind of fire-fighting force? The absurdity of it would at once appear, and you would all insist that the men must be able to understand all orders. And yet the law, which was supposed to compel the vessels to have at least 75 per cent of the crew capable of understanding all orders, is permitted to sleep.

This is not skill. It is not patriotism. It is not safety. We seamen pleaded for more than 20 years to have this absurdity abolished. When it was abolished on paper we thought that we should see this danger pass away. Now we shall have Americans coming to the sea. We shall have skill and efficiency at least on the deck. We shall have Americans on deck at sea.

"TITANIC" DISASTER RECALLED.

When the *Titanic* went down, and took with her a host of very wealthy and influential people, we expected to find the bereaved ones come forward to help us get laws which would make any recurrence of that kind of disaster humanly impossible. We were wrong. We heard from none of them in this country. We failed to appreciate the resourcefulness of the legal mind. The power to construe is sometimes equal to the power to legislate. Some day we shall, if we can keep the law on the books, find the way to get the law enforced. In the meantime our soldiers ought not to be sent across a submarine-infested ocean with a lot of so-called seamen who have had about as much chance to learn the duties of seamanship as the infantryman has to learn horsemanship by practicing on a wooden horse.

The world's experts, sitting on and reporting from commissions appointed by Governments, have united in treating the able seaman as the unit of efficiency and as the unit in the safe manning of vessels. First, the boy to get some little experience, then rated as ordinary seaman, then more and more knowledge and experience, until he knows the work of a seaman, and then is rated able seaman. From the brightest of these are gradually culled those who become officers. Beginning with third mate, some more experience, some selection, and a second mate is made, some more and the first mate is made, then again some more and the master is selected. Thus are skilled officers developed for the sea.

Without skill in the seamen there can be no safety in ocean travel. It was the recognition of this as one of the factors that caused the La Follette Seamen's Act to become law. This is its distinctive humanitarian feature. The seamen must be skilled. Looking over the record of losses they were found to be growing during each half decade of the last 50 years. The growth was so steady that it suggested a general underlying cause. A serious study of the passing of skill in seamanship linked the loss of life and of skill together. It was found that improved vessels, marking of channels, placing of lights, and the study

of meteorology were all good, but these things could not replace the waning skill, and the nations acted accordingly, in so far as their ship-owners would permit or their power could be overcome.

Undermanning and unskilled manning of merchant vessels could not be permitted to continue. Safety at sea depends on the human element even more so than safety on shore. Whenever or wherever self-interest can be placed at the service of safety other forces or law may be dispensed with, but the shipowner, having shifted his risk, arising from the dangers of the sea to the general public, and having rid himself of liability to the traveler, was no longer vitally interested in safety. His vital interest had become the cost of operation, as distinct from safety, and law had to step in. Law itself divorced from self-interest is but a poor makeshift, but it is better than nothing.

THE QUESTION OF UNDERMANNING.

Regardless of the number of persons composing her crew, a vessel which has not enough skilled men to manage her in ordinary conditions of weather and sea without calling the lookout or the watch below is undermanned. It is not sufficient that the vessel has the skill on board; it must be at all times available. Undermanning imposes on skilled seamen inordinate toll, and endangers life and property not only in the case of the vessel undermanned but in case of other vessels. The old system of watch and watch—one-half of the crew working while the other half sleeps or rests—was born of self-interest taught by experience. It was gradually getting out of use in our vessels. Some swift reminders were sent by chance, and Congress, heeding the warning, made the age-long system of watch and watch a matter of statute law. That the law has not been respected up to the present arises from the fact that it has no help from self-interest. When one day some court shall refuse limitation of liability because the law enacted for the better protection of life at sea has been disobeyed the law will be obeyed.

With one-half of the crew on deck, their eyes accustomed to the light, seeing and understanding the situation, ready to obey the order when but half uttered, many a disaster has been avoided, thousands of lives saved. With the men in their berths, except the wheelman and the lookout man, the men must get out of their berths, they must come from one kind of light into another. Their eyes are for the moment blinded, they are not able to obey promptly, even if skilled, and the precious first moments are lost.

This nearly always makes the difference between the vessel saved or lost—the people on the vessel saved or lost. With half the crew on deck, when the disaster occurs, the watch does what is most immediate and then leads the watch coming on deck into new light and not knowing except in a mechanical way how to obey the orders given.

No time, then, for the interpreter. Besides, he may have lost his nerve or his life. Suppose it be a fire. The question is not how to

get out of the building and into the street and to safety. The question is how to get into boats with some chance of safety. But the boats must be lowered, they must be kept on even keel in the lowering, they must be kept free from the side of the vessel in a heavy sea, and when water borne and free from the side of the vessel, the boat must be so managed that it can remain buoyant in the rough and angry sea. Such work is never done successfully except by men who know the sea, and who know how to work with it. The boy is on the living bronco instead of on the wooden horse, and you need no further information of what will happen.

Safety at sea must, however, always be cooperative. There are times when no skill can help. There may be temptations placed in the way of men sitting snugly on shore that will so darken their sense of right and wrong that a vessel may be sent out to sea so poorly constructed and equipped that she has no chance in a real gale. Self-interest used to take fairly good care that the vessels were not only well manned but that they were well built and properly equipped. The insurance has stepped in with its temptations, and law and rigid inspection are needed.

No crew can save a vessel sent to sea to be lost. And such things have happened. Those on board must then depend on boats alone, and boats must also be provided by law and enforced by honest inspection.

The most important of all safety is, however, the safety of a whole people, and if the Nation has a seacoast there can be safety to the nation only through highly skilled seamen. It was the seamen of England that protected the English people against the Armada. Carthage was only overcome by Rome when Rome obtained control of the sea. English seamen had much to do with preventing Napoleon from crossing the Channel; English seamen are guarding England to-day. German seamen, using the new sea weapon, are guarding Germany. Our shore line is long, our harbors many; stationary defenses are inadequate; and unless we shall have skilled seamen of our own our people may taste bitter fruit. Let the control over the sea pass from the white to the yellow race and humiliation and danger will some day be suffered by our people. We must have seamen of our own blood, of our own Nation, and we can not have them unless the ideals and standards nursed in American schools find expressions in sea life. This is the aim of the La Follette Seamen's Act. Before condemning it, before mutilating it, please give it some study, and your patriotism will hold your hand.

V.

SEAMEN'S ACT IN OPERATION—CONTENTION THAT IT HAS EQUALISED THE SAILOR'S WAGES AND ALSO PUT THE AMERICAN SHIPOWNER ON A BASIS OF EQUALITY WITH HIS FOREIGN COMPETITOR.

"We have established a great and elaborate machinery; we have set up a complicated system under which we have pretended to supervise every shipowner, good or bad alike, and under which we have tried to make negligence, carelessness, and apathy impossible. But we have never tried to make it unprofitable."

This is another quotation from the late Joseph Chamberlain, of Birmingham, and while it is specifically directed at the gradually decreas-

ing safety measures, it is equally applicable to the controlling question in the matter of the comparative wage cost of operating American and foreign vessels—the crux of competition.

We have entered into elaborate treaties under which the several nations agree to arrest, detain, and return each other's deserting seamen; we have passed laws forbidding shipowners to pay to the seaman any of his earned wages in foreign ports; we have tried to hold the seaman to the vessel by punishments, ranging from branding with red-hot irons to imprisonment; we have tried to prevent desertions by penalizing the seaman on his return. We have done all of this and more, and with the purpose of keeping the wages as low as possible. Ocean commerce is highly competitive and legislatures and courts have in the past united with the shipowners in trying everything to accomplish the purposes outlined above. Never until the passage of the seamen's act was there any effort to equalize the wages by raising the lower to the higher and to make violations of this policy unprofitable.

The British shipowner, finding that some other European shipowners paid less wages than he could pay and yet obtain men, caused the repeal of the laws under which he was compelled to carry British seamen, and when this did not accomplish the purpose he sought and obtained the right to employ lascars, Chinese, and South African Negroes. We, here in the United States, followed his example. We lost our native seamen; he was losing his, and to no purpose, because other shipowners of other nations could and did obtain permission to do likewise. The sum of all the efforts was to drive the men of the Nordic race from the sea. The spirit of this race, together with the spread of education, made it impossible to hold them to the sea. Other races were taking their place.

The American was leaving the sea. The American boy was shunning it. Sea life was passing from our people until we had neither vessels nor seamen.

FACTORS TO BE CONSIDERED.

It is a matter of common knowledge and general agreement that the over-sea merchant marine of the United States was steadily decaying from about the time of the Civil War to the beginning of the present European war. The reasons were economic, but they were created by law. The causes for this decay have been variously stated to be:

- (1) Our antiquated navigation laws.
- (2) Excessive building cost of American vessels as compared with foreign vessels.
- (3) Excessive cost of operation of American vessels as compared with foreign vessels.

When those who use the phrase, "Our antiquated navigation laws"—a phrase so widely disseminated and so generally used that it is assumed to need no explanation—are asked for specifications, they say, "We furnish better accommodations for our seamen than do other nations." But when our laws dealing with seamen's accommodations are placed side by side with those of England, France, Germany, and Norway we find that our laws are not as liberal to the seamen as the laws of those countries. Then they say, "We furnish a better scale of food." But when we compare the English scale of food as it

existed up to 1906 we find it identical with the scale of food on American vessels up to February 21, 1899, and that the present scale of food of the two nations is about the same. We further find that the scale of food in vessels of Norway, Denmark, Germany, and France differs very slightly from our own and that there can not be very much distinction in "the cost of food per person" in either of them.

Then it was claimed that American vessels carry more men. Comparing the same class of vessels belonging to any of these nations with similar vessels under the American flag and employed in the same trade it will be found that there is no real difference in the number of men employed and that the American vessels sometimes carry one or two men more, sometimes two or three less.

Finally, it was suggested that it was a question of wages; and this is true, in so far as it applies to vessels sailing from ports of the United States. The only difference in wages between foreign and American vessels trading between ports of other countries is in the wages of the officers, and this is not by any means an important amount.

Excepting the wages and the number of men carried, the Department of Commerce has, after careful investigation, reported that the several maritime nations are on almost perfect equality.

Summing up the testimony of the shipowners as it has been given to the committees of Congress and to the Merchant Marine Commission, we find that some of the witnesses testified that the cost of an American vessel is about 33 per cent higher; others claimed that it is 50 per cent higher. One of these contentions is as correct as the other. If an American-built vessel costs \$900,000, the claim is made that it can be built on the Clyde for \$600,000. This would make the differential about 33 per cent; but if the vessel were built on the Clyde at \$600,000, and the same vessel would \$900,000 if built in an American yard, it would be correct to say that the difference is 50 per cent.

Of course, the more expensive vessel carries a financial burden throughout her normal life—that is, in proportion to her higher original cost. Given 6 per cent interest on money invested, 6 per cent insurance, and 5 per cent depreciation, if the vessel costs \$300,000 more, she will have to earn annually about \$50,000 more than the vessel that costs \$300,000 less before she can begin to pay dividends.

The origin of this difference is in the monopoly of the American shipbuilder. The cure is free ships. Let the shipowner buy his vessel where he can buy it cheapest, and sail it where he can make the most money. The emergency-shipping act furnished a remedy, though it is not a complete one. In order to make it complete those vessels so registered must be admitted to the coastwise trade. When this is done the cost of construction will be equalized, and the privilege of participating in the coastal and the intercoastal trade will be such as to induce foreign vessels to come under the American flag.

THE COST OF OPERATION.

Aside from the difference in operating cost arising from the initial building cost—interest on money invested, insurance, and depreciation—the cost of operation is in taxes, port dues, fees for services by Government officials, fuel, lubricating oil, waste, repairs, food for the crew, and wages.

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Let us assume that two vessels, one under Belgian, the other under American flag, are trading between Antwerp and Boston. These vessels will buy their supplies in either of the two places, where they can be bought cheapest. The same situation exists between San Francisco and Sydney, or between Puget Sound and Japan, so that the only difference is in the wage cost, and we have only to deal with the question of wages.

The wages of the seamen have been and are now the going wages of the ports of shipment. The wages of the port of shipment are very largely determined by the wage level of the country tributary to the port in question, modified, if at all, by the wages of the port to which the vessel is bound.

The United States is a high-wage country, and the wages paid here are higher than in other countries, except in New Zealand and Australia. Vessels, regardless of their flag, if in the same or similar trade and shipping their men in any port in the world, pay substantially the same wages for the same kind of work, so that the Boston wage rate is paid by the Norwegian, the English, or the French, if they hire their men in Boston; the Liverpool wage rate is paid by the Norwegian, French, or American, if they hire their men in Liverpool.

This has been so clearly understood that in 1884 the Congress of the United States made it the basis of an act "to remove certain burdens on the American merchant marine and encourage the American foreign-carrying trade, and for other purposes."

One of the main features of this act was to permit the American shipowners to discharge the crew hired in an American port, to hire another crew in the same port with his competitor, to come to the United States and go back to a foreign port without reshipping in the United States, and thus get away from the American wage rate. This was an effort to equalise the cost by leveling the American wage down to the rate paid by the competitor. The act was approved on June 26, 1884, and was enacted upon petition from the American shipowners. It is still the law.

EFFECT OF THE LAW.

This law resulted in equalizing the wage cost of American and foreign vessels trading between foreign ports. If, however, failed of its purpose in American ports—first, because it contemplated and provided for the imprisonment of seamen coming on an American ship from a foreign country to the home port of the vessel, an innovation contrary to the time-honored conceptions of maritime law; second, because this innovation found no sympathy either from the judges, the lawyers, or the public; thirdly, if had the entire trend of American life against it. Its chief result was to increase the drift from the sea on the part of Americans.

The imprisonment of seamen for leaving American vessels in American ports was abolished by the act of December 21, 1898. From that time the seamen had a right to quit; they could not be held against their will, unless they were Chinese, who were prevented by the exclusion act from coming on shore, and this gave to the vessels of the Pacific Mail and to the Dollar vessels engaged in the Oriental trade an advantage above all other vessels—even over the Japanese vessels—in the wage cost of operation. These vessels shipped their men in Hong-

hong at about \$15 Mexican per month; the Japanese shipped their men in Japan, paying 25 yen per month.

The differential in wages against the American vessel continued, and it ranged from 20 per cent in British ports to 30 or 40 per cent in some Baltic and Mediterranean ports, and then rose to more than 200 per cent in ports of India or China. These facts are testified to by the shipowners and their spokesmen.

Taken together with the difference in the cost of construction, the difference in wages was fatal. The American ship could not compete. To overcome these handicaps, the American shipowner was exempted from taxation of floating property, from payment of fees levied in the enforcement of the navigation laws, and was further permitted to disregard any safety line in loading. He can now load his vessels to any depth he thinks proper.

He can carry as much of a deck load as he may think safe. There are no laws restraining him. He has shed practically all liability to traveler and shipper through limitation of shipowners' liability, which has been reduced to the "freight money pending" and the income from sale of the wreck. While this is conditioned on having an efficient crew, he escapes by organizing a separate corporation for each vessel, so that when the vessel is lost the corporation has no assets.

He was permitted and encouraged to obtain and employ the cheapest men that could be found. With the exception of the licensed officers, he could and did disregard any question of skill or experience or even of a knowledge of the language of the officers, in the men employed. Experience, age, nationality, and race were disregarded to obtain the cheapest men, and yet the wage cost of operation continued against the American vessel. This had its origin in the wage level on shore and in treaties with other countries.

TREATIES WITH OTHER NATIONS.

In treaties entered into with other maritime nations we had agreed mutually to arrest, detain, and surrender seamen who might desert or refuse to continue to labor in our high-wage ports under contracts which they had signed in low-wage ports. These treaties were further assisted by statutes, enforceable upon demand made by the consul of the nation to which the vessel belonged. When such demand was made we used our peace officers to hunt down the deserter and to deliver him back. In other words, we used our police power to keep the wage rate of our competitors below that of our own. He hired his men in the cheapest wage ports and compelled them to stay by their contracts in our high-wage ports, thus gaining an advantage which enabled him to drive the American flag from the ocean.

To assist in meeting this condition Congress passed the laws of June 26, 1884, of June 19, 1886, and the mail-subsidy act, but these laws were not sufficient. American money went into foreign vessels, and because "the heart of man is with his treasure" its interest was to prevent any real change, except such as could be met by other nations without increasing their wage cost.

But this war has taught us many things, and it has brought most of the American-owned vessels operated under foreign flags back under the American registry. The vessel could earn as much money and it was safer. Where will they go when the war is over and reasonably

normal times return? That is the question which is being considered by men who have not made themselves properly acquainted either with the causes of the decay of our shipping or who have not taken the time to study and understand the seaman's act. The American was driven from the sea because of the difference in the cost of operation between American and foreign vessels. If the difference can be overcome the vessels will remain under American registry; if not, the vessels will pass to those who can operate them more cheaply and efficiently. The remedy is in the La Follette Seamen's Act.

This act provides for the abrogation of the treaties and the repeal of the laws under which this country served as the slave catcher for ship-owners of other nations. It provides in ports of call for the payment of one-half of the wages earned, in order that the seaman may have the means with which to exercise and protect his new freedom. This act abolishes the ancient status.

In reshipping her men the foreign vessel comes under the same law as American vessels, which law prohibits any payment of wages before they have been earned, a standard of efficiency is imposed upon men shipping as able seamen (part of deck or navigating crew), and the law further provides that in all vessels of more than 100 gross tons leaving ports of the United States at least 75 per cent of the crew in each department of the vessel must be able to understand any orders given by the officers of such vessel.

Foreign vessels coming to ports of the United States will thus be compelled, if their crews shall quit them, to hire men of the same skill and under the same law as men are hired by American vessels. As a result the wages paid by them will be the same.

This is an effort to equalize the wage cost by permitting the economic law of wages to level foreign wages up to the rates paid in our ports.

Of course, the struggle against such legislation was bitter and it is by no means ended.

EXECUTION OF THE LAW.

The Department of Commerce is authorized and instructed to make rules for the enforcement of some of the most important sections of this act. Of course, the drafting of these rules is done by the Bureau of Navigation and the Bureau of Inspection, subject to approval by the Secretary of Commerce.

The department whittled at the forecastle clause. Through the intervention of the President it went to the Attorney-General and then to the courts, where it yet remains. It proceeded to whittle at the crimping clause. The district courts gave a construction against crimping, the court of appeal, quoting the department, gave a construction in its favor; we hope to get it to the Supreme Court, but can not tell. One court holds that under the law the seaman must be paid half of the wages earned or due and not collected; others that half of all wages earned must remain with the vessel to induce the seaman to remain with the vessel. Prevention of desertion is destructive of equalization and contrary to the purpose of Congress in passing the bill. It would seem too plain for discussion that Congress intended that the seaman should desert until wages were equal and desertion stopped, because there was nothing to induce the seaman to desert. If this was not the purpose, why abrogate the treaties?

* There can be no fair competition without equal wage cost. There can be no equalization of the wage cost unless the seaman is free. Not simply legally free but economically free, by being permitted to draw a part of his wages in any port. Equalization will, however, fail if it stops at our own ports. But it will not; it can not, if it be permitted to operate. The same selfish instinct that causes the seaman to desert in a high-wage port will compel the shipowner to pay, if going to a high-wage port, such wages as will induce the seaman to remain voluntarily by the vessel. But this means New York wages in Liverpool and to all vessels, regardless of where the vessel is bound. This is exactly what has taken place. First equalization in our ports, then an increase in British ports to the American standard.

Some will say that this is the war. They will be entirely wrong. The war began in August, 1914. There was no change in seamen's wages until the seamen's act got into force in foreign vessels, and this was not until August, 1916. The last men arrested under the old laws and expiring treaties were arrested at Norfolk, and the vessel was compelled to let them go again because she could not get to sea before the treaties were dead. Just as soon as the seaman was free to quit his vessel he did so, and equalization came with a rush. For the first time in 60 years the American shipowner was on equality with his foreign competitor.

Within the last six months there have been strong representations from foreign Governments against the seamen's act. It was claimed that the operation of the act interfered seriously with war efficiency. The seamen were deserting and vessels were delayed, so it was alleged. Upon inquiry it was found that the men were deserting, but they promptly signed on again in other vessels going into war zones, and there was no delay that was not readily cured by paying the wages of the port. The complaining Governments were informed that the remedy was in their own hands. If the seamen were paid the wages of the port, they remained with either the same vessel or shipped on some other vessel. Pay to them the American wage and there evidently will be no trouble. The most important of them has taken this advice.

The wages out of English ports are now the same as from Atlantic American ports. There are no longer any desertions, except from vessels which have been away from England so long that they are not being paid the new English rate. Let the seamen's act be understood and enforced and there will be no difference in the wages of seamen, and there will be no desertions except of a few individuals who, for some reason, can not get along in that particular vessel, while they can get along in any other vessel. The American man and the American dollar will both come to the sea and the vessels now built will remain under our own flag.

To accomplish this the La Follette seamen's act must be enforced. The act was passed to remedy serious national and personal evils; it is highly remedial and it is entitled to be so construed that it will effectuate. The whittling process must be stopped and reversed. The seamen are patient. Their life has taught them to wait and hope. Their hope is in the Supreme Court. They all, or nearly all, feel that, when properly presented, the act will stand the test in that court.



AMERICAN SEA POWER AND THE SEAMEN'S ACT

ARTICLE ON THE AMERICAN SEA POWER AND THE SEAMEN'S ACT

By

ANDREW FURUSETH

PRESIDENT INTERNATIONAL SEAMEN'S UNION



PRESENTED BY MR. FLETCHER

APRIL 16, 1918.—Referred to the Committee on Printing

WASHINGTON
GOVERNMENT PRINTING OFFICE
1918

REPORTED BY MR. SMITH OF ARIZONA.

IN THE SENATE OF THE UNITED STATES,

May 28, 1918.

Resolved, That the manuscript submitted by the Senator from Florida [Mr. Fletcher] on April 16, 1918, entitled "American Sea Power and the Seamen's Act," by Andrew Furuseth, president of the International Seamen's Union of America, be printed as a Senate document.

Attest:

JAMES M. BAKER, *Secretary.*
By PETER M. WILSON, *Chief Clerk.*

AMERICAN SEA POWER AND THE SEAMEN'S ACT.

AMERICAN SEA POWER AND THE SEAMEN'S ACT.

The seamen's act is strongly contested by Governments of foreign nations, who have made urgent appeals to our Government to suspend or at least modify some of its to them most irksome provisions. Our Government has, according to report, answered that the remedy is in their own hands. Pay the same wages as that paid in American ports and give to the men such reasonable treatment as will induce the men to remain with their vessels and the desertions will practically cease.

The struggle has shifted to the American courts. Foreign ship-owners or, in some instances, foreign Governments are employing American attorneys and are contesting the act not only in the district courts but in all appellate courts. British interests or the British Government is employing the law firm of Frederick C. Couder, Howard Thayer Kingsbury, who appears for the British consuls as *amicus curiae*. The seamen respectfully request, through the undersigned, that the following be made into a Senate document.

Respectfully submitted,

ANDREW FURUSETH,
President International Seamen's Union of America.

THE VENGEANCE OF THE MAWIS AND MAMMERS

After the disappearance of his son, the old man was at first very ill, but he soon recovered, and he was able to go about again. He had a good time, and he was very happy. He had many friends, and he was always well received. He was a good man, and he was always kind to everyone. He was a good father, and he was always kind to his children. He was a good husband, and he was always kind to his wife. He was a good neighbor, and he was always kind to his neighbors. He was a good citizen, and he was always kind to his fellow citizens. He was a good man, and he was always kind to everyone.

He was a good man, and he was always kind to everyone.

AMERICAN SEA POWER AND THE SEAMEN'S ACT.

Sea power is in the seamen; vessels are the tools of seamen; tools ultimately belong to the races or nations who can use them.

The histories of the Hansa League, of Venice and Genoa, of Spain and Portugal, of The Netherlands, and of England need but to be mentioned in order that this may be appreciated to the fullest extent.

Sea power was with the Norsemen until the black plague depopulated those countries. It passed from those countries to other nations who could furnish men. The nations in turn kept it as long as they could furnish the men from their own people. When they had to seek men elsewhere the tools of the seamen—the vessels—went to the people from whom the men came.

Spain, once all powerful on the sea, could not man the battleships which fought under her flag at Trafalgar (Mahan, *Sea Power in History*). The Spanish Armada is often said to have been overcome by the elements, and the proud Philip so declared; but Prof. James Anthony Froude in his lectures, "English Seamen in the Sixteenth Century," gives the true explanation. England was sending some of her best blood to sea, and her seamen so improved the rig and sailing qualities of their vessels that they "could work to windward with sails trimmed fore and aft." The foremast was changed into a jib boom; the aftermast into a spanker boom; fore and aft sails were put on them; the trusses were improved and the English vessels could fight under sail. "The English ships had the same superiority over the galleons which steamers have now over sailing vessels. They had twice the speed; they could lie two points nearer to the wind." Favored by a brisk wind they chose their own positions from which to use their guns. They had discarded the high forecastle and the high stern castle, and furnished a poor target for the slow Spanish vessels' guns. The high freeboard of the Spanish galleons and their higher fore and after castles made them the best of targets for the English guns. It was better vessels designed and handled by better seamen that destroyed the Spanish Armada. "It was to the superior seamanship, the superior qualities of English ships and crews, that the Spaniards attributed their defeat" (p. 4, *English Seamen of the Sixteenth Century*).

When the revolutionary wars opened the fleet of France was, in vessels, men and guns, about equal with the English; but England could remain her vessels five or six times, while France could not do so once. France had to resort to landsmen, whom she trained in harbor until they could dismantle and rerig the vessels with remarkable speed; but after a gale at sea the vessels were like wrecks. (Mahan, *Sea Power in History*.)

The English vessels might leave the harbor looking like wrecks, but after a couple of days at sea they were in the very best of trim and fitness. (Mahan, *Sea Power in History*.)

When the seamen's act was passed our Navy was short of men to the number of some 18,000. The shortage has increased with the launching of each new vessel. The men now in the Navy come from

the farms. After proper training for a year or more they became useful, after two years' training they become really valuable, and in two years more they go out from the Navy and from the sea.

The number of Americans, native or naturalized, in the merchant marine is negligible. They are mostly officers. The men to man the Navy can not come from the merchant marine in sufficient numbers to even furnish the first quota, not to speak of filling up the wastage from disease and war.

The American boy shunned the sea, the American man left it again, if need had driven him there. America was and is yet without seamen—without sea power. During the hearings held by a subcommittee of the Senate Committee on Commerce, Mr. Brittain, secretary of an Atlantic ship owners' association, gave the following testimony:

Senator CRAWFORD. Can you get deck hands for \$15 a month?

Mr. BRITTAINE. Little boys about 15 or 16 years of age. I might make one remark in regard to the nationality of the deck hands. The Norwegian is about pretty well eliminated, just beginning to be eliminated as a seaman.

Senator BURTON. What do you mean, from the sea, generally?

Mr. BRITTAINE. He has exhausted himself. We have exhausted that source of supply. I was talking to our seamen the other day and was very much surprised to find that they are almost wholly Slavs from Trieste, Austria, and from the Balkan States. It looks as if that hardy Germanic and Scandinavian race is about exhausted. Just as in the city of New York to-day the Irish have been eliminated.

We have sucked Ireland dry: so far as the sea is concerned we have sucked Scandinavia dry—that is, Norway, Sweden, and Denmark—and now we are falling back on the Balkan States. Even the British is decreasing. I noticed in the last report here 18,000 additional Lascars in the British mercantile marine (p. 414).

On pages 36, 37, and 38 of his report for the fiscal year ending June 30, 1916, the Commissioner of Navigation reports upon the number of vessels and men under the American flag as follows:

On June 30, 1915, there were 26,701 documented merchant vessels of the United States of 8,389,429 gross tons and 1,556 yachts of 97,902 gross tons. These vessels in detail with the crews of each, excluding masters, were printed in the list of merchant vessels for 1915. Of the total, 3,281 were vessels or yachts employed on the ocean, 2,800 were employed on the Great Lakes, and 22,176 were employed on rivers, sounds, bays, and harbors, or were less than 100 gross tons, and accordingly employed usually near the shore. The number of these vessels, classed as to propelling power, and the number of men required to man them were as follows:

	Seagoing.		Great Lakes.		All other.		Total.	
	Vessels.	Crew.	Vessels.	Crew.	Vessels.	Crew.	Vessels.	Crew.
Merchant vessels:								
Sail.....	1,964	10,507	220	1,284	4,262	14,207	5,866	25,905
Steam.....	1,178	41,041	1,615	21,061	4,159	37,517	6,952	99,719
Motor.....	45	521	733	1,440	8,218	19,504	8,996	21,465
Unrigged.....					4,587	4,554	4,887	4,887
Total.....	2,587	52,069	2,663	23,782	21,546	76,282	20,701	153,123
Yachts:								
Sail.....	112	734	17	46	70	247	199	1,027
Steam.....	207	2,913	75	131	26	492	365	3,436
Motor.....	375	1,467	140	276	589	1,268	1,024	3,031
Unrigged.....					225	47	25	47
Total.....	694	5,004	232	453	636	2,074	1,556	7,531
Grand total.....	3,281	57,073	2,800	24,235	22,176	78,356	28,257	150,664

¹ This total embraces all unrigged vessels without regard to the waters on which they navigate.

² This total embraces all house-boats without regard to the waters on which they navigate.

To these totals should be added, of course, one master for each vessel, or a grand total, including masters, of 187,921 officers and men.

Of this total, however, seagoing vessels and yachts afford chances of employment for only 57,073 officers and men and 3,281 masters, or 60,354 in all. This number is, in some respects, a fairer figure than the total for comparison with the British and German figures, for virtually all marine employment in the United Kingdom is on salt water and nearly all German employment is also on the sea or the Baltic, though the German part of Rhine navigation resembles that on the Hudson River. With the American figures it should be borne in mind that when the warships provided in the naval appropriation act of 1916 are completed, the American Navy will require about 77,000 enlisted men. At present there are about 55,000 enlisted men in the American Navy.

The commissioner recognizes that these figures are of very little value for the purpose of estimating the number of real seamen. The "All Others" will have to be eliminated at the very beginning as including no seamen. Even the remaining—"Seagoing" and "Great Lakes"—is badly padded, because the "Seagoing" includes barges, which rarely have more than one and never more than two real seamen—that is, men inured to the sea.

In the "Great Lakes" are included all kinds of vessels regardless of their tonnage or employment.

For the purpose of obtaining some fairly reliable estimate of the number of able seamen (18 months' or more experience) that would be needed under the seamen's act, a report was made to the Senators and Members of Congress whose special duty it was to report upon the bill. The report was made from the list of merchant vessels and corrected from personal knowledge of men who were exceptionally well acquainted with lake shipping. It was further checked up by the use of the so-called lake register.

American vessels on the Great Lakes.

[Exclusive of harbor craft, which do not leave port.]

	Number of vessels.	Total number of men in deck crews, exclusive of licensed officers.
Freight steamers.....	736	5,733
Passenger steamers.....	83	966
Carferries (most of which carry passengers).....	24	219
Total steamers.....	833	6,948
Yachts.....	58	116
Schooners and barges.....	272	1,194
Total steam and sail vessels of all classes.....	1,183	8,258

Harbor tugs, which sometimes go outside the harbor entrance to pick up a tow, a few very small steamers which occasionally go outside a very short distance, fish and dredge tugs, and motor boats, of the kind that go outside harbors, total approximately 539, and would employ, in addition to the master, about 550 men on deck.

On page 38 the report has a table of "ordinary seamen" and "able seamen" registered by the shipping offices of the Lake Carriers' Association. The table gives 6,767 ordinary seamen (less than 18 months' experience), of which 4,744 are Americans. The number of "able seamen" as given is 6,549, of which 3,193 are reported as American. The table is given to indicate the nationality of the men employed on the Great Lakes.

On page 37 the commissioner reports as follows upon the number of native and naturalized Americans on seagoing merchant vessels:

NATIONALITY OF CREWS.

The statements made show the number of officers and men required on American merchant vessels and yachts. The men actually serving in various capacities on board change, of course, from time to time, and under ordinary conditions a considerable number are ashore, temporarily out of employment; but during the European war this number has been unusually small. The nationality of those who man the American merchant marine is a matter of concern more in its relation to the national defense than in its relation to the growth of the merchant marine. American ocean steamers in the table above number 1,178, with 41,041 officers and crew. During the three months of May, June, and July, 1916, shipping commissioners under instructions analyzed the actual crew lists of the larger steamships, numbering 433, of 1,520,176 gross tons, or over half the total tonnage, with the following results:

	American born.	American nat. uralized.	British.	Scandinavian.	Spanish.	French.	Italian.	Russian and Finnish.	Portuguese.	German and Austrian.	Asiatic.	Others.	Total.
Deck department.	1,511	919	346	1,153	166	19	160	443	87	340	33	630	5,897
Engine department	2,579	852	682	480	2,626	8	40	232	191	431	74	818	8,413
Stewards, miscel- laneous.....	2,002	715	1,824	199	206	23	82	40	54	270	103	635	6,700
Total.....	6,092	2,486	2,952	1,833	2,400	55	282	715	342	1,041	210	2,103	21,030

Americans, born or naturalized, number 9,178, or 45 per cent of the total. Of these the largest number was employed in the steward's department, due to the fact that colored waiters are employed in considerable number by some of the main coastwise steamship lines. The number of Americans employed in the deck department is the smallest. The special qualities of eye and nerve called into constant play from the seamen in the days of sailing vessels are seldom invoked in the deck department of the modern steamship, while they are in great demand at high rates of pay in the erection of steel "sky scrapers" in all the larger American cities. The change in the nature of employment on shipboard and relatively more desirable employment ashore, conditions which legislation can not well alter, have turned Americans from the sea to their advantage as individuals. The Spaniards are employed almost wholly in the engine and fire rooms.

The vessels here reported upon would have three licensed officers each, exclusive of the master. They would probably have an average deck crew, exclusive of licensed officers, of 10 sailors, which indicates that very few of the men before the mast are either native or naturalized Americans.

The "crew" includes, of course, the men and women (there is quite a number of women) serving in the steward's department. The 81,308 seamen in the seagoing and the Great Lakes will therefore have to be considerably reduced when there is a discussion about men available for the Navy.

Then they must be further reduced by eliminating those who are not subject to draft or who are physically unfit. But to the number remaining there can be safely added quite a large number who, while they are not subject to draft, will volunteer. The enactment of the seamen's law will bring a goodly number of these.

But allowing for all such, there is no chance of getting from the merchant marine as now manned the necessary men to man and then remain the fighting Navy.

These facts were thoroughly appreciated by the legislators. They sought to provide national seamen for the national emergencies which may arise. These are some of the thoughts that prompted the legislators to pass the seamen's act.

The figures of the Commissioner of Navigation are inclusive of the officers.

In July, 1917, the seamen's union took a nationality census of its membership.

It is admitted by all that ships and seamen are of supreme importance in this war, and we submit the following table of nationalities of seamen on American vessels, and the following explanation, for serious consideration.

The table on page 11 is made up from the records of the districts of the seamen's union as they were on July 15, 1917—the Pacific, the Lakes, the Atlantic, and Gulf. Each district has three divisions—sailors; firemen; cooks and stewards; or deck department; engine department; steward's department. Licensed officers are not members. It was provided with substantially the same explanations as here given, for the use of the Committee on the Merchant Marine and Fisheries.

Attention is called to the fact that on the Pacific nine-tenths of those actually sailing are members and that therefore the total number of men employed will be about 13,919 in place of 12,527.

On the Great Lakes the organization has about 50 per cent, so that the total number employed will be about 19,456 instead of 9,728.

On the Atlantic sailors are 70 per cent organized and the number of sailors employed there should therefore be about 11,365, instead of 7,956. The firemen being 50 per cent organized there will be employed about 13,134, instead of 6,567. The cooks and stewards being 60 per cent organized, we have about 9,713 instead of 5,629.

The total number of men employed in the lake and seagoing vessels under the American flag will, with the percentage outside of the union included, be about 67,600, instead of the 42,400 given in the table. If the percentage of Americans found amongst the organized seamen were to apply to those not in the organization, there should be about 19,260 Americans among the 67,600, but this would be placing the figure too high. The number of foreign born among the lake men who are not in the union is greater than among those organized—the Lakes are safe from submarines.

The number of sailors including the unorganized should be about 27,250 (using round figures). Allowing the same percentage of native Americans among the unorganized as are found among the organized, the number should be 6,300. We are inclined to think this figure too large, though there has been a very marked increase in the number of native Americans going to sea as sailors in the last three years. The total number of Germans employed is given in the table as 3,721. Allowing about the same percentage of Germans among the unorganized as are found among the organized the number should be 5,544, but we believe that this is too large and that there

are about 5,000 Germans now sailing under the American flag. The number sailing in the stewards' department are occupying the most skilled positions—cooks, bakers, and butchers.

The combined number of sailors born in Holland, Denmark, Sweden, and Norway (neutrals) is shown by the table to be 7,883 out of a total of 18,864. Allowing for the same percentage among those not in the union the numbers will be about 10,800 out of 27,250. These men are practically all able seamen of more than three years' experience and it would not be an exaggeration to say that these four nationalities constitute 50 per cent of the number of trained sailors in our merchant marine.

Nationality.	The Pacific: About 90 per cent organized; sailors practically all A. B.'s.			The Great Lakes: About 50 per cent organized; sailors are in the majority A. B.'s, a minority ordinary seamen.			The Atlantic: Sailors mostly A. B.'s; about 70 per cent organized, firemen 50 per cent, cooks 60 per cent organized.			Total.			Grand total.			
	Sailors.	Fremen.	Cooks.	Total.	Sailors.	Fremen.	Cooks.	Total.	Sailors.	Fremen.	Cooks.	Total.				
Argentina.....	32	47	6	85	69	138	69	103	7	179	102	192	1	322		
Austria.....	12	25	17	55	21	92	1	122	1	110	110	151	17	342		
Belgium.....	631	332	797	1,800	614	926	135	1,675	1	730	2	1,152	12	124		
Bulgaria.....													3,391	50		
Chile.....													1,765	1,987		
Cuba.....													2	1		
Denmark.....	444	50	86	582	98	48	9	163	650	169	162	162	9	9		
Finland.....	509	53	21	582	62	62	1	62	167	167	167	167	1	167		
France.....	34	221	21	300	243	294	3	30	9	776	587	424	42	806		
Germany.....	465	137	15	186	243	294	33	570	147	300	24	471	1,797	13		
Greece.....	98	16	34	148	39	81	1	82	147	147	147	147	147	147		
Holland.....	15	9	31	55	56	16	4	59	225	104	152	152	152	152		
Italy.....	2								73	73	70	70	70	70		
Luxembourg.....																
Mexico.....	4	10	33	67	1	1	1	1	2	1	1	1	2	2		
Norway.....	1,397	275	128	1,800	621	179	42	842	1,638	742	742	742	66	1,196		
Portugal.....	2	6	53	60	1	1	1	1	36	512	512	512	9	557		
Romania.....	2	5	7						5	2	2	2	2	2		
Russia.....	415	50	17	482	260	138	16	414	1,140	191	191	191	47	1,378		
South America, not specified.....	37															
Spain.....	13	130	89	232	34	1	1	35	110	610	262	262	123	123		
Sweden.....	1,261	225	71	1,537	287	230	19	596	1,127	798	62	1,987	2,675	1,283		
Switzerland.....	19	6	26	51	12	30	3	12	30	40	40	40	49	18		
Turkey.....	7	20	3	30	3	2,780	1,910	2,234	799	6,483	3	24	12	12		
United States.....	529	1,350	910	74	42	74	4	1	47	1,327	1,250	1,910	4,487	3,766		
Others.....										23	23	42	42	42		
Totals.....	6,660	3,011	2,847	12,537	4,239	4,416	1,073	9,728	7,950	6,567	5,629	20,152	18,864	13,994	9,549	42,407

The number of Spaniards, as found in the table, is 1,369, of whom 794 are credited to the engine department. It is, however, a matter of common knowledge that Spaniards and Spanish-speaking South Americans constitute more than 50 per cent of the total number of firemen on the Atlantic. They object to the language clause of the seamen's act, and are, to a large extent, organized under the I. W. W.

Comparatively few of them can understand any English and they make no effort to learn.

SAFETY OF LIFE AT SEA.

Committee hearings and other investigations demonstrated that skill was passing from the sea. In spite of the improvements in vessel architecture, the largely perfected charting of the ocean and its currents, the increased knowledge of the air and its currents, and the improved light service at the entrance of harbors and on dangerous shoals, the increase in the loss of life at sea had been steadily growing.

This was illustrated to the legislators by the following table, which was taken from disasters published in newspapers from 1860 to 1914:

Modern methods of ship construction do not and can not overcome the necessity for skill in the men who handle and care for the ships. As seamanship has diminished, disasters have multiplied, despite all improvements in shipbuilding. An investigation into the loss of passenger ships since 1860 proves this beyond all doubt. Divided into periods of five years, the figures show a loss of life as follows:

	Lives lost.
1860 to 1864, inclusive, 5 years.	1,018
1865 to 1869, inclusive, 5 years.	1,803
1870 to 1874, inclusive, 5 years.	2,302
1875 to 1879, inclusive, 5 years.	2,570
1880 to 1884, inclusive, 5 years.	2,570
1885 to 1889, inclusive, 5 years.	2,643
1890 to 1894, inclusive, 5 years.	2,654
1895 to 1899, inclusive, 5 years.	2,659
1900 to 1904, inclusive, 5 years.	3,165
1905 to 1909, inclusive, 5 years.	4,332
1910 to 1914, 4 years and 5 months.	5,445
Total lives lost	31,300

The figures given were obtained by a careful investigation and search through the files in the Congressional Library at the National Capital. It may be claimed, perhaps, that the data for the earlier periods is possibly not entirely complete, but that can also be said of the later years. It is practically impossible to get even an approximately correct list of lives lost on cargo vessels during the periods mentioned, and losses on such vessels are therefore not included.

The above is taken from a document originally printed in the Coast Seamen's Journal and reprinted by order of the Senate Committee on Commerce.

The safety of the traveling public was another thought that prompted the passage of the seamen's act.

THE DECAYING MERCHANT MARINE AND THE CAUSE.

The hearings demonstrated further that the real reasons for the decay of the merchant marine were economic. It had its main origin in the law and especially in the treaties and conventions with other

nations. Through these there arose the conditions which made competition with the ships of other nations practically impossible.

The charge that American vessels furnished larger quarters for the men, that the men on American vessels were better fed, and that American vessels carried more men were found to have no real foundation in fact; but it was plainly shown that the American vessels were compelled to pay a higher wage rate; 20 per cent higher than the English; 25 to 30 per cent higher than on vessels sailing from continental ports; and up to 300 per cent higher than the wages paid in ports of the Orient. It was found that Congress had once before sought for means to equalize the difference in wage cost, and thus make competition with vessels of other nations possible. On June 26, 1884, an act was approved, section 20 of which authorized the master of any vessel in the foreign trade to engage men in any foreign port, to bring such men to American ports and back to a foreign port without reshipping them in the United States, and thus get away from the American wage rate.

The difference arose from simple economic facts. The United States is a high-wage country. The wages of the seamen depend upon the port in which the seaman is hired. The wages of the port are largely determined by the wage rate of the country tributary thereto. The wages of the port are the same to all vessels without regard to nationality if they hire or engage their seamen there. These are facts now admitted by all.

The vessels belonging to foreign nations naturally engaged their men either in their own ports or in ports where men could be obtained at a still lower wage. Thus English, German, and Norwegian vessels hired men in ports of the Orient. The foreign vessels came to our ports with men at the lowest wage that was paid in any part of the world, and under our treaties we were compelled to prevent these men from deserting. We agreed that we would arrest, detain, and surrender deserters back to their ships, and thus we used our police power to keep the expenses of our competitors so much below our own that we were driven from the ocean. The natural instinct of the seamen was to desert and try to obtain the higher wage of the port; but our law and the fear of recapture kept the men by their vessels in sufficient number to maintain the wage difference.

Congress believed that if the men were made free they would respond to the instinctive desire for better wages. If the men were furnished with the means of living until they could ship in some other vessel, they would be still more ready to desert, and if the conditions of engagement and the standards of skill necessary to improve safety were provided alike for all vessels leaving ports of the United States, the wages on all vessels so leaving would be the same.

WHAT THE TREATIES PROVIDED.

The seamen's act is not enforced—it is meeting determined opposition from foreign shipowners and it suffers from the opposition of our own Department of Commerce and the misunderstanding of our own courts; but to the extent that it is permitted to operate, it is equalizing the wages in all vessels leaving American ports; especially is this so on the Atlantic seaboard. The seamen of Japan are not making any use of the law up to the present; but it has been in full force only about one year, and the Japanese seamen are waiting to

see how it acts with men of the Aryan race before they begin to make such use of the law as they fully know they can. It was further expected by the legislators that the equalization in wage cost would not stop in ports of the United States. The same instinct that would cause the seamen to quit their vessels to get higher pay would cause foreign shipowners to so pay and so treat their men that the men would remain in their vessels voluntarily, and so there would automatically come a practical equality in the wage cost of operating merchant vessels throughout the world. No one who has studied the law has any doubt that this will be the result if the law is given a fair chance. This, however, can not be absolutely demonstrated until the war is ended. These were some more of the thoughts that prompted the passage of the law. The following excerpt from the treaty with France is given as an illustration of what these treaties were:

The respective consuls general, vice consuls, or consular agents, may arrest the officers, sailors, or other persons making part of the crews of ships of war, or merchant vessels of their nation, who may be guilty or be accused of having deserted said ships and vessels, for the purpose of sending them on board or back to their country. To that end the consuls of France in the United States shall apply to the magistrates designated in the act of Congress of May 4, 1826—that is to say, indiscriminately to any of the Federal, State, or municipal authorities; and the consuls of the United States in France shall apply to any of the competent authorities and make a request in writing for the deserters, supporting it by an exhibition of the registers of the vessel and list of the crew. Upon such request alone, thus supported, and without the exaction of any oath from the consuls, the deserters not being citizens of the country where the demand is made, either at the time of their shipping or of their arrival in the port, shall be given up to them. All aid and protection shall be furnished them for the pursuit, seizure, and arrest of the deserters, who shall be put and kept in the prisons of the country at the request and at the expense of the consuls until these agents may find an opportunity of sending them away. If, however, such opportunity should not present itself within the space of three months, counting from the day of the arrest, the deserters shall be set at liberty, and shall not again be arrested for the same cause. (Article 9, consular convention, 1853.)

The present convention shall remain in force for the space of 10 years from the day of the exchange of the ratifications, which shall be made in conformity with the respective constitutions of the two countries, and exchanged at Washington within the period of six months, or sooner if possible. In case either party gives notice 12 months before the expiration of the said period of 10 years of its intention not to renew this convention, it shall remain in force a year longer, and so on from year to year, until the expiration of a year from the day on which one of the parties shall give such notice.

In testimony whereof the respective plenipotentiaries have signed this convention, and thereunto affixed their seals.

Done in the city of Washington the 23d day of February, A. D. 1853. (Article 13, consular convention, 1853.)

CONGRESS WIPE OUT THE TREATIES.

It will be noted that the treaty may be abrogated after one year's notice by either of the contracting parties.

In order to make the seaman legally free—the legal owner of himself—it was necessary to abrogate all treaty provisions such as the above. In order to make this abrogation effective it was necessary to repeal the domestic laws enacted for the enforcement of the treaties. This is done in the following sections (secs. 16, 17, and 18) of the seamen's act:

Sec. 16. That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries and for the arrest

and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels or foreign nations in the United States and the Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provision in conflict with the provisions of this act, ought to be terminated, and to this end the President be, and he is hereby, requested and directed, within 90 days after the passage of this act, to give notice to the several Governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign Governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions.

SEC. 17. That upon the expiration after notice of the periods required, respectively, by said treaties and conventions and of one year in the case of the independent State of the Kongo, so much as hereinbefore described in each and every one of said articles shall be deemed and held to have expired and to be of no force and effect, and thereupon section 5280 and so much of section 4081 of the Revised Statutes as relates to the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, shall be, and is hereby, repealed.

SEC. 18. That this act shall take effect, as to all vessels of the United States, 8 months after its passage, and as to foreign vessels, 12 months after its passage, except that such parts hereof as are in conflict with articles of any treaty or convention with any foreign nation shall take effect as regards the vessels of such foreign nation on the expiration of the period fixed in the notice of abrogation of the said articles as provided in section 16 of this act.

SEAMEN GIVEN WAGES EARNED.

In order to make the seaman economically free it was necessary to compel the vessel to pay him some of the money which he had earned. Without this his physical necessities would hold him bound to his vessel in a strange land. Hence, Congress enacted section 4 of the act :

SEC. 4. That section 4530 of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

" Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive, on demand, from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section 4529 of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes any court having jurisdiction may, upon good cause shown, set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

The penalty for refusing to comply with the law is the cancellation of the contract with full payment of wages earned; but the wages earned become due and payable at once or within two days, and in order that there may be a penalty for any undue delay, such penalty is found in section 3 of the act.

SEC. 3. That section 4529 of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

" SEC. 4529. The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is dis-

charged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within 24 hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage."

The manifest purpose of Congress was evidently that the seaman should be paid one-half part of the wages earned and not received. Congress wanted to make the seaman really free so that the selfish instinct might play in him and cause him to desert from the vessel in order that he might get more wages and the vessel be compelled to pay the wages of the port.

The master of any American vessel, who shall attempt to prevent the seaman from going on shore for the purpose of obtaining the relief granted by these sections, is prevented from so doing by section 291 of the Revised Criminal Code, which is as follows:

Whoever being the master or officer of a vessel of the United States, or on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, beats, wounds, or without justifiable cause, imprisons any of the crew of such vessel, or withholds from them suitable food and nourishment, shall be fined not more than \$1,000 or imprisoned not more than five years, or both. Nothing herein contained shall be construed to repeal or modify section 4611 of the Revised Statutes.

SEAMEN GIVEN LIBERTY.

To imprison the master must have "justifiable cause" even when the vessel is at sea or on a roadstead. In port any and all power to imprison is taken away from the master of any American vessel by section 7 of the seamen's act, which section is as follows:

Sec. 7. That section 4506 of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"Sec. 4506. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

"First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

"Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within 24 hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

"Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

"Fourth. For willful disobedience to any lawful command at sea, by being at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

"Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by being, at the option of the master, placed in

irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every 24 hours' continuance of such disobedience or neglect, of a sum of not more than 12 days' pay, or by imprisonment for not more than three months, at the discretion of the court.

"Sixth. For assaulting any master or mate, by imprisonment for not more than two years.

"Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than 12 months.

"Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than 12 months."

FOREIGN VESSELS SUBJECT TO OUR LAW.

The master's power to compel obedience of seamen in port is deleted from the law. With or without permission, the seaman could always go on shore to make an appeal to the consul or a court. Under existing law the seaman may go on shore freely unless the vessel is to depart within the 24 hours and unless he absents himself from his duty—during working hours—in which instances the penalty is forfeiture from his pay. To forcibly detain him on the vessel becomes false imprisonment.

The treaties and conventions above referred to having been abrogated, foreign vessels, while within the jurisdiction of the United States, and the seamen on such vessels come within the laws of the United States. In the *Wildenhus's case* (U. S. Rept., 120, p. 11), Mr. Chief Justice Waite, speaking for the court, said:

It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purpose of trade it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief Justice Marshall in *The Exchange* (7 Cranch, 116, 114), "it would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction and the Government to degradation if such merchants did not owe temporary and local allegiance and were not amenable to the jurisdiction of the country." (*United States v. Dieckelman*, 92 U. S. 520; *Philimores Int. Law*, 3d ed., 483, par. 351; *Twiss's Law of Nations in Time of Peace*, 229, par. 157; *Croesy's Int. Law*, 167, par. 176; *Halleck's Int. Law*, 1st ed., 171.)

The exceptions mentioned by Chief Justice Waite have been deleted from the law as it existed prior to the abrogation of the treaties and conventions, and the master of any foreign vessel who seeks to hold any seaman on the vessel against his will is necessarily subject to the same law and the same writs that would apply to any master of any American vessel in a like case, and the State court, if the vessel be within the jurisdiction of a State or a Federal court, under the fifth as well as the thirteenth amendment to the Constitution of the United States, is bound to protect the seaman in his personal liberty.

FREEDOM FROM THE CRIMPING SYSTEM.

By furnishing the seaman with half of the money earned Congress sought to liberate the seaman from the iniquitous crimping

system. The power of the crimp was in the necessity of the seaman. The seaman was without means to live; the crimp furnished the means and in return determined the seaman's wages, what vessel he was to ship on, and the advance that was to be paid. By furnishing the seaman with the means to keep away from the crimp and prohibiting all payment of wages before it was earned the seaman would be benefited and be able to accept employment on any vessel paying the wages of the port or to stay away from vessels that were seeking men below such wages. This is provided in section 11 of the act, which is as follows:

SEC. 11. That section 24 of the act entitled "An act to amend the laws relating to American seamen for the protection of such seamen, and to promote commerce," approved December 21, 1808, be, and is hereby amended to read as follows:

"SEC. 24. That section 10 of chapter 121 of the laws of 1884, as amended by section 3 of chapter 421 of the laws of 1886 be, and is hereby, amended to read as follows:

"SEC. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seamen, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

"(b) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister, or children.

"(c) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

"(d) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine not exceeding \$500 or imprisonment not exceeding six months, at the discretion of the court.

"(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

"(f) That under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

It will here be noted that the law gives the seaman the right to allot any portion of the wages to be earned to "his grandparents, parents, wife, sister, or children."

Substantially this is the law of all maritime nations, but some give further authority to allot to a savings bank.

In the case of the *Jacob N. Haskell* the district court of the northern district of Florida held that:

The peculiar nature of maritime commerce requires that there should be safeguards thrown around this service to protect shipping and to insure performance by seamen of their contracts. I am of opinion that Congress in the passage of this statute intended that the master of the ship should at all times have in his hands to the credit of the seaman a sum equal to that which has been paid to him out of the wages earned until the end of the voyage.

In the case of *Jacob Nellman v. Steamship London*, the District Court for the Eastern District of Pennsylvania accepts the above opinion as a correct construction.

It is apparent that if the above construction be accepted the two main purposes of section 4 (the half-pay section) will not effectuate.

This section was the most warmly contested section in the whole act. The shipowners (foreign and American) who appeared in opposition were willing that the imprisonment for desertion should be repealed; they were willing that advance wages and allotment to original creditor should be abolished; but they insisted that the seaman's right to demand and actually collect one-half of the wages earned at each port would lead to endless desertions. The construction put upon the language by the shipowners was that, as the seaman went from port to port he could collect one-half of the wages then earned and not received, and in this way he would gradually get all the wages earned. They insisted further that it would be a nuisance to have to pay one-half in every port, because many vessels in the coastwise trade visit a new port every day. Congress was perfectly willing to prevent such possible nuisance and inserted the proviso that the demand must not be made oftener than once in five days. But Congress had two specific purposes in passing this section. The seaman was to be free to quit the vessel in any safe harbor in order that the wage cost might be equalized; the seaman was to receive one-half wages earned to send to his people or to pay off obligations which he might have contracted, or to meet current needs on leaving. The opposition of the shipowners was perfectly well understood and disregarded.

Reading section 11 it becomes plain that the shipowners may, by taking advantage of the construction placed on section 4 by these courts, defeat the purpose of Congress by insisting that the men employed shall allot one-half of their wages, and the seaman, being destitute and unable to obtain advance, would be held to his vessel by his economic need.

The foreign shipowner would promptly insist upon allotment to relatives or a savings bank, and this would destroy the arch in the structure, the whole purpose of equalization would fail, and the foreign shipowner regain his advantage in competition.

The foreign shipowner can not seriously complain. He is on an exact equality with American vessels in obtaining men.

EQUALITY OF SKILL AND EXPERIENCE.

For the purpose of promoting safety at sea it was necessary to provide a definite standard of skill in the men employed. England had recognized this in her emigrant vessels; the German shipowners

had recognized it by adopting it for all German vessels, under article 1148 of the German law dealing with insurance of employees; and Australia and New Zealand had adopted it for all vessels within their jurisdiction; and all had placed the time of experience needed at three years. In the case of *In re Pacific Mail Steamship Co.* (C. C. A., 64, p. 410) it had been decided that any vessel where the crew could not understand the language of the officers, is inefficiently manned. For these reasons, but also with the further purpose of equalizing the wage cost, Congress enacted section 13 of the seamen's act and made it applicable to all vessels "of 100 gross tons and upward." Section 13 is as follows:

Sec. 13. That no vessel of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes, and except as provided in section 1 of this act, shall be permitted to depart from any port of the United States unless she has on board a crew not less than 75 per centum of which in each department thereof are able to understand any order given by the officers of such vessel, nor unless 40 per centum in the first year, 45 per centum in the second year, 50 per centum in the third year, 55 per centum in the fourth year after the passage of this act, and thereafter 65 per centum of her deck crew, exclusive of licensed officers and apprentices, are of a rating not less than able seamen. Every person shall be rated an able seaman, and qualified for service as such on the seas, who is 19 years of age or upward, and has had at least three years' service on deck at sea or on the Great Lakes on a vessel or vessels to which this section applies, including decked fishing vessels, naval vessels, or Coast Guard vessels, and every person shall be rated an able seaman and qualified to serve as such on the Great Lakes and on the smaller lakes, bays, or sounds who is 19 years of age or upward and has had at least 18 months' service on deck at sea or on the Great Lakes or on the smaller lakes, bays, or sounds, on a vessel or vessels to which this section applies, including decked fishing vessels, naval vessels, or Coast Guard vessels and graduates of school ships approved by and conducted under rules prescribed by the Secretary of Commerce may be rated able seamen after 12 months' service at sea: *Provided*, That upon examination, under rules prescribed by the Department of Commerce as to eyesight, hearing, and physical condition such persons or graduates are found to be competent: *Provided further*, That upon examination under rules prescribed by the Department of Commerce as to eyesight, hearing, physical condition, and knowledge of the duties of seamanship a person found competent may be rated as able seaman after having served on deck 12 months at sea or on the Great Lakes; but seamen examined and rated able seamen under this proviso shall not in any case compose more than one-fourth of the number of able seamen required by this section to be shipped or employed upon any vessel.

Any person may make application to any board of local inspectors for a certificate of service as able seaman, and upon proof being made to said board by affidavit and examination, under rules approved by the Secretary of Commerce, showing the nationality and age of the applicant and the vessel or vessels on which he has had service and that he is entitled to such certificate under the provisions of this section, the board of local inspectors shall issue to said applicant a certificate of service, which shall be retained by him and be accepted as *prima facie* evidence of his rating as an able seaman.

Each board of local inspectors shall keep a complete record of all certificates of service issued by them and to whom issued and shall keep on file the affidavits upon which said certificates are issued.

The collector of customs may, upon his own motion, and shall, upon the sworn information of any reputable citizen of the United States setting forth that this section is not being complied with, cause a muster of the crew of any vessel to be made to determine the fact; and no clearance shall be given to any vessel failing to comply with the provisions of this section: *Provided*, That the collector of customs shall not be required to cause such muster of the crew to be made unless said sworn information has been filed with him for at least six hours before the vessel departs, or is scheduled to depart: *Provided further* That any person that shall knowingly make a false affidavit for such purpose shall be deemed guilty of perjury and upon conviction thereof shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, within the discretion of the court. Any viola-

tion of any provision of this section by the owner, master, or officer in charge of the vessel shall subject the owner of such vessel to a penalty of not less than \$100 and not more than \$500: *And provided further*, That the Secretary of Commerce shall make such rules and regulations as may be necessary to carry out the provisions of this section, and nothing herein shall be held or construed to prevent the board of supervising inspectors, with the approval of the Secretary of Commerce, from making rules and regulations authorized by law as to vessels excluded from the operation of this section.

LAW IS EQUALIZING WAGES.

To show that the act in so far as it is permitted to operate is effectuating the purpose of Congress in equalizing the wage cost in foreign and domestic vessels, we quote from the forty-first annual report of the Legal Aid Society, whose principal officers are: Charles E. Hughes, president; Carl L. Schurz, vice president; Allen Wardwell, treasurer; Cornelius P. Kitchell, secretary, and Leonard McGee, attorney in chief. On pages 19 and 20 of that report is the following:

Never before has the seamen's branch been called upon to assist in having construed so many new questions of law, owing to the changes in our old statutes, due to the new seamen's bill. The effect of the seamen's bill as enforced, particularly as to the provisions relating to advance notes or advance wages, and the right of seamen to collect half their wages in American ports, as applicable to American and foreign vessels, is by far the greatest and most important of anything that has transpired in the shipping world for a long time. The Legal Aid Society took action in favor of abolishing the advance note or of making a law abolishing the payment of wages in advance of the time earned; this action was taken when the bill was pending before the Committee on Merchant Marine and Fisheries in Congress. Our activities were in line with the provision of the seamen's bill, abolishing involuntary servitude and removing the remedies given to foreign governments and foreign shipowners, to arrest seamen who desert in ports of the United States. Seamen, being given a right on American and foreign vessels alike, to demand one-half wages or half the wages earned by them and unpaid, in American ports, have been able to enforce that right by the provision of the law which enables them to bring suit for the full amount of wages owing them in case the master refuses to pay them half. I am inclined to believe the theory and actual operation of the seamen's bill is bound in time to prove its soundness and efficiency.

I am informed that seamen coming here on foreign vessels which are sent to American ports to compete in American trade leave their vessels unless the master voluntarily guarantees them an increase in wages, which will bring their average earnings up to a par with the average earnings of American seamen, and other seamen in American ports, which have already arrived at the American standard. As a rule, seamen on foreign ships demand one-half their wages and then quit. The result is, the foreign ships' master must refurbish his vessel with a crew before leaving. To do this, he must apply to shipping masters or one of the seamen's institutions who supply seamen, but he has to pay the going rate of wages in the port of New York or Norfolk, or whatever port he happens to be in.

The seamen then take the precaution to see that there is incorporated in their contracts of hiring, a provision that they shall be paid off in ports of the United States only. This assures them that they will always be discharged in a port paying wages as high as the ones in the United States, or that they shall be returned by such foreign owners to ports of the United States, where they will again have an opportunity of securing the best rate of wage. One need not be a mathematician or a student of economy to conclude that the enforcement of this legislation means the creation of an opportunity to the American shipowner to compete with foreigners on a par, so far as labor cost is concerned, and secondly, gives America an opportunity to build up a merchant marine by reason of the fact that higher wages are paid on board all vessels and rules for safety appliances, better food, larger crews' quarters, and general conditions on board, are enforced on American vessels. An interest in shipping is stimulated which has certainly never before existed. Government records show that some 1,162 American vessels have been built and launched in the United States during the past year.

SAFETY PROVISIONS APPLY TO FOREIGN VESSELS.

The disaster to the *Titanic* (nearly 1,600 persons lost on account of inefficient equipment with lifeboats and men to handle them) caused Congress to enact section 14, which is as follows:

SEC. 14. That section 4,488 of the Revised Statutes is hereby amended by adding thereto the following: "The powers bestowed by this section upon the Board of Supervising Inspectors in respect of lifeboats, floats, rafts, life preservers, and other life-saving appliances and equipment, and the further requirements herein as to davits, embarkation of passengers in lifeboats and rafts, and the manning of lifeboats and rafts, and the musters and drills of the crews, on steamers navigating the ocean, or any lake, bay, or sound of the United States, on and after July 1, 1915, shall be subject to the provisions, limitations, and minimum requirements of the regulations herein set forth, and all such vessels shall thereafter be required to comply in all respects therewith; *Provided*, That foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life-saving appliances, their equipment, and the manning of same."

It will be noted that here is a proviso, which make "the rules herein prescribed as to life-saving appliances, their equipment, and the manning of same" applicable to all foreign vessels. Again the safety of the traveling public and the equalization of the wage cost are coupled together. Equal skill means equal wage in the same port.

Among the regulations and rules is the following about manning boats:

CERTIFICATED LIFEBOAT MEN—MANNING OF THE BOATS.

There shall be for each boat or raft a number of lifeboat men at least equal to that specified as follows: If the boat or raft carries 25 persons or less, the minimum number of certificated lifeboat men shall be 1; if the boat or raft carries 26 persons and less than 41 persons the minimum number of certificated lifeboat men shall be 2; if the boat or raft carries 41 persons and less than 61 persons the minimum number of certificated lifeboat men shall be 3; if the boat or raft carries from 61 to 85 persons, the minimum number of certificated lifeboat men shall be 4; if the boat or raft carries from 86 to 110 persons, the minimum number of certificated lifeboat men shall be 5; if the boat or raft carries from 111 to 160 persons, the minimum number of certificated lifeboat men shall be 6; if the boat or raft carries from 161 to 210 persons, the minimum number of certificated lifeboat men shall be 7; and, thereafter, 1 additional certificated lifeboat man for each additional 50 persons; *Provided*, That if the raft carries 15 persons or less a licensed officer or able seaman need not be placed in charge of such raft; *Provided further*, That one-half the number of rafts carried shall have a capacity of exceeding 15 persons.

The allocation of the certificated lifeboat men to each boat and raft remains within the discretion of the master, according to the circumstances.

By "certificated lifeboat man" is meant any member of the crew who holds a certificate of efficiency issued under the authority of the Secretary of Commerce, who is hereby directed to provide for the issue of such certificates.

In order to obtain the special lifeboat man's certificate the applicant must prove to the satisfaction of an officer designated by the Secretary of Commerce that he has been trained in all the operations connected with launching life-boats and the use of oars; that he is acquainted with the practical handling of the boats themselves; and, further, that he is capable of understanding and answering the orders relative to lifeboat service.

Section 4463 of the Revised Statutes as amended is hereby amended by adding the words "including certificated lifeboat men, separately stated," to the word "crew" wherever it occurs.

MANNING OF THE BOATS.

A licensed officer or able seaman shall be placed in charge of each boat or pontoon raft; he shall have a list of its lifeboat men and other members of its crew, which shall be sufficient for her safe management, and shall see that the men placed under his orders are acquainted with their several duties and stations.

A man capable of working the motor shall be assigned to each motor boat. The duty of seeing that the boats, pontoon rafts, and other life-saving appliances are at all times ready for use shall be assigned to one or more officers.

The regulations are in substance those that were agreed upon by the International Conference on Safety at Sea held in London, England.

In passing this law Congress had before it, for such remedies as might be devised, some very serious and growing evils:

The white race was leaving the sea, oriental races were filling the vacancies; sea power was gradually passing from the white race; a steadily increasing loss of life at sea caused by inefficient manning of vessels—seamen unskilled in their calling and unable to understand and execute orders at all times; the well-recognized decadence of the national merchant marine; the practical absence of native or naturalized seamen; and the therefrom resulting danger to the Nation.

Any remedies that would not cause the American to again seek the sea; that would not furnish the requisite skill—the ability to understand and execute orders; that would not restore the American merchant marine, would not meet the situation. It was a question of getting the right kind of men.

Americans would not become seamen unless the conditions were so improved that they could become seamen without loss of self-respect. The living conditions on the vessels had to be improved and the earning capacity so increased that the seaman could maintain a family, or there must be hope for this in the future. To create such conditions in American vessels only would mean to drive the few remaining American vessels from the ocean.

CONGRESS WANTED AMERICAN MEN AND SHIPS.

It has been found that two or more free men will not be kept at the same work for any length of time unless their wages are the same. Experience has further taught that any definite standard of skill tends to equalize the wages which must be paid. The remedy seemed, therefore, to be to enact laws which would tend to improve the condition of the American seaman and to make such laws, so far as this could be done, applicable to all vessels coming within the jurisdiction of the United States.

Foreign shipowners and their American partners, shipowners or others, who had invested money in foreign vessels fully understood what such legislation would mean to them. They would have to pay the American wage rate. Released economic law would be no respecter of persons, classes, or nations, and so they fought every inch of the way.

They appealed to their own Governments to send protests to the United States, and those Governments protested; they appeared before the committees of Congress and tried to show that such law would be destructive to American shipping; they warned Congress that foreign shipowners would not send their vessels to American ports; and some American shipowners joined in the warning by saying that they would sell their vessels to foreigners—they would be compelled to do this.

When Congress, nevertheless, passed the bill, they appealed to the President to veto it. When the President signed the bill and thus it

became the law, they appealed to the people of the United States, using for this purpose the chambers of commerce and, through the aroused class interests, such part of the daily and monthly press as could be deceived or would take orders. Some shipowners, who for any reason sold any of their vessels, informed the public, through the press, that the "iniquitous seamen's law" had forced them to sell. They tried to nullify the law through regulations, which the Department of Commerce had the right to make, and in this they have been so successful that the language clause is nullified and other parts of the act seriously injured. These errors of judgment will have to be rectified, as no doubt they will be, or the act will fail to accomplish the purpose intended by Congress.

As the shipowners have fought for what they conceived to be their class interests before Congress, the President, the public, and in the department, so they are now before the courts. A committee of shipowners in London, such is the information, is to use the best American legal talent obtainable to contest the seamen's act in the courts, presumably on the grounds of the comity of nations, international law, and that Congress exceeded its power in passing this law.

When this legislation is considered in connection with the friendly relations, which ought to govern the conduct of one nation to another, it is not easy to see how the question of comity can at all arise. The United States enacts certain laws dealing with its seamen; the purpose is to induce a better class of men to seek the sea. Better men are needed for the safety of vessels, the safety of life at sea, and for the safety of the Nation. It is part of the settled policy of the United States that there shall be no involuntary servitude, except as a penalty for crime, within its jurisdiction. Americans would not seek the sea while the law governing seamen did not conform to this principle. This Nation, for its own protection, felt impelled to so change the law governing seamen that it would be in harmony with the basic policy of the Nation. In doing this, it did not seek to discriminate in its own favor, it did not discriminate against any nation or between them. There seems to be no reason for any belief that the United States had any but the best and friendliest motives.

Viewed in the light of the interests of shipowners as such, there is no discrimination. The shipowners of the United States and of all other nations are, when within the jurisdiction of the United States, placed on a perfect equality. Seamen who are dissatisfied with the wages or treatment which they receive may leave the vessels on which they are serving. That this freedom granted to seamen is by them used to improve their condition is natural and was expected. It is part of the purpose to improve the personnel of the merchant service. It may be that other nations, through the precedent set by the United States, may feel impelled to adopt similar laws to govern their seamen, and shipowners of other nations may, from this point of view, consider this legislation as unfriendly to them; but to this contention, if it shall in fact be made, the answer seems obvious. Any class may and is likely to protest when deprived of any special privilege; but such protests arise out of selfish motives and they are inevitably swept away by the advancing civilization based upon Christianity. The slavery or serfdom which bound the toilers on land has passed from all Christian countries. The corresponding status of the seaman must necessarily follow.

These questions were very seriously considered by Congress and the bill was passed. It was seriously considered by the President, he signed it, and it became the law.

While Congress had these very questions under consideration the following memorandum was prepared for the use of such members as had the matter more immediately before them:

THE BEARING AND APPLICATION OF THE PRINCIPLES OF INTERNATIONAL LAW UPON THE SEAMEN'S BILL.

Provisions of the seamen's bill which may appear objectionable:

Section 3 of the Senate bill and section 4 of the House bill provide for the payment of one-half of the wages which shall be due at any port where such vessel shall load or deliver cargo during the voyage. At the end of each of these respective sections occurs a proviso which makes them applicable to 'seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.'

Section 10 of the Senate bill and section 11 of the House bill forbid advance wages and allotments. Paragraph (e) at the end of each of these sections provides: "That this section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

Section 12 of the Senate bill and section 13 of the House bill provide that a certain per cent of the crew must be able to understand the language of the officers; that a certain per cent must be able seamen; that certain life saving equipment and appliances must be carried. The language is: "That no vessel shall be permitted to depart from any port of the United States unless it conforms to the standards laid down in those sections."

Since these are the only sections which apply to foreign vessels, here only could objections be taken by foreign powers. It will be observed that the first two groups of sections named, have to do with the welfare of seamen. The public policy is to give to this class of labor greater economic freedom, so that Americans will return to the sea. The last group of sections, while having to do with the welfare of seamen, are primarily for the purpose of protecting the public by making travel by water less dangerous to life.

To make these policies effective it becomes necessary to extend the rules laid down to foreign as well as American vessels. Thus public safety would be but little protected if these requirements were applied only to American vessels, for the great bulk of the passenger carrying is done in foreign vessels. The provisions as to wage advances and payments if not applied to foreign vessels as well, would only serve to further discriminate against American seamen, make their employment more difficult, and drive them from the water. Thus the exact opposite of the intended result would be attained. In this law is invoked the principle that the remedy must be coextensive with the evil or the purpose of the law will be defeated. This is the same principle made use of in our quarantine laws and regulations. If quarantine laws were applicable only to American vessels their efficiency would be materially lessened.

From the above it follows that this bill is no wider in its application than is necessary to make it effective and thus carry out the public policy of Congress. Our national sovereignty must be limited indeed if this can not be done. The bill does not attempt to control foreign citizens or foreign ships outside of the jurisdiction of the United States. If it be objected that this legislation contravenes the law of nations, that objection must be predicated upon the proposition that a sovereign does not have complete jurisdiction within its own territory whenever the welfare and safety of its nationals are at stake. The validity of this proposition will next be considered.

IS THE JURISDICTION OF A NATION WITHIN ITS OWN TERRITORY EXCLUSIVE AND ABSOLUTE?

Chief Justice Marshall, in the case of *Schooner Exchange v. McFadden* (7 Cranch, 116, 136), said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply

a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exception, therefore, to the full and complete power of a nation within its own territories must be traced to the consent of the nation itself. They can flow from no other legitimate source." (Moore Digest International Law, vol. 2, p. 4; Wharton Int. Law., p. 140.)

Vattel's Law of Nations, at page 40 (old edition), lays down the principle that the right to trade is not a natural right:

"Every nation has a right to choose whether it will or will not trade with another, and on what conditions she is willing to do it. If one nation has for a time permitted another to come and trade in the country, she is at liberty, whenever she thinks proper, to prohibit that commerce, to restrain it, to subject it to certain regulations, and the people who have carried it on can not complain of injustice."

"The right to trade 'depends upon the option of a nation to annex any conditions it may see fit to the admission of foreign vessels into its ports, whether they be public or private.'" (Wheaton Int. Law, 8th ed., p. 163.)

Chief Justice Waite, in the Wildenhus case (120 U. S., 1), said:

"It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purpose of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for as was said by Chief Justice Marshall in *The Exchange* (7 Cranch, 144) it would be obviously inconvenient and dangerous to society and would subject the laws to continual infraction and the Government to degradation, if such merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country." (U. S. v. Diedelmann, 92 U. S., 520; 1 Phillimore's International Law, 3d ed., 483, sec. ccll; Twiss's Law of Nations in Time of Peace, 229, par. 159; Creasy's International Law, 167, par. 176; Halleck's International Law, 1st ed., 171; Moore International Law Digest, vol. 2, p. 7.)

Mr. Moore, in the above last-named work, volume 2, page 88, quotes from Mr. Marcy, Secretary of State, to Mr. Jackson, chargé d'affaires, Austria, under date of January 10, 1854:

"No nation has a right to supervise the municipal code of another nation, or claim that its citizens or subjects shall be exempted from the operation of such code, if they have temporarily placed themselves under it. The character of the municipal laws of one country does not furnish a just ground for another state to interfere with the execution of these laws even upon their own citizens when they have gone into that country and subjected themselves to its jurisdiction."

"The private vessels of one state entering the ports of another are not exempt from the local jurisdiction, unless by express compact, and to the extent provided by such compact." (Wheaton's International Law, 8th ed., p. 153.)

"The authority of a nation within its own territory is absolute and exclusive." (Church v. Hubbard, 2 Cranch, 187, 234; Wharton Int. Law Digest, 2d ed., Vol. 1, p. 1.)

"While no effort has been made to exhaust the authorities, the above citations are ample sufficient to establish the general proposition that the jurisdiction of a nation within its own territory is exclusive and absolute. This being true, there is no ground upon which any objection to this legislation can reasonably be made. To make the matter clearer, attention is called to several large classes or subjects of analogous legislation, common to nearly all nations which show how above-named principle of sovereignty is invoked."

CLASSES OR SUBJECTS OF LEGISLATION BASED UPON THE PRINCIPLE THAT THE JURISDICTION OF A NATION WITHIN ITS OWN TERRITORY IS EXCLUSIVE AND ABSOLUTE.

1. Immigration legislation: Such legislation is in principle much more drastic than the proposed seamen's legislation. The latter imposes upon admission certain conditions requisite for the protection and reservation of our own people; the former legislation absolutely and unconditionally prohibits admission. The immigration act of 1882 encountered the same sort of foreign protests which have been made against the seamen's bill. (Cong. Rec., vol. 15, pt. 4, p. 3430.)

2. Tariff legislation, practically universal, is a bold assertion of the sovereign right to totally exclude the merchants of another sister nation from our ports and waters. The present tariff discriminates by a duty of 10 per cent ad

valorem in addition to the regular tariff unless goods are imported in vessels of the United States or in vessels of foreign countries having special arrangements with this country. This act also forfeits both ship and cargo unless imported in a vessel of the United States or in a foreign vessel belonging truly and wholly to citizens of the country from which the goods come or from which such goods can only be or most usually are shipped. (Sec. 4, subsec. J, act of Oct. 3, 1913.) These laws discriminate. The seamen's bill merely imposes like conditions on all.

3. Discriminatory tonnage dues and charges: The following excerpt from a note by the State Department to the Chinese legation, August 13, 1880, shows how exclusive is the national control over tonnage dues and tariff charges:

Like the question of alien tonnage dues, of which my former note treated, the matter of customs duties on cargo entering the ports of the United States from foreign ports is one to be exclusively decided, in the absence of specific and reciprocal exemption by treaty, according to the domestic legislation of the country. Moore International Law Digest, volume 2, page 73.

4. Pilotage, harbor, and lighthouse regulations and charges.

5. Ship manifest and ship loading regulations: The Harter Act of February 13, 1893, like the other-named classes of laws or regulations, applies to foreign vessels. This act forbids a foreign master to make a covenant in a ship manifest limiting liability for damage caused by the negligence of the master. Such a covenant is entirely valid by the native law of some of these masters, but it is forbidden here.

6. Alien labor and Chinese exclusion acts: These acts were passed to protect American labor inland. It would seem to follow that we have an equal right to protect our maritime labor. This conceded, it would appear reasonable that this power may be broadly enough exercised to accomplish the purpose for which such legislation is enacted so long as the exercise is confined to our own territorial limits. All this must be implied in sovereignty or it is a weak and meaningless term.

7. Quarantine and sanitation regulations: In these laws we require rigid inspection and disinfection of foreign vessels. The principle of exclusive territorial sovereignty is invoked in the interests of the public health. In this field we have gone so far as to require our consuls to inspect and disinfect German vessels in German ports before such vessels sail for the United States. Act of February 15, 1893. Upon the protest of the German Government we desisted upon the ground that this inspection infringed upon their territorial sovereignty. (Moore Int. Law Digest, vol. 2, p. 151.)

8. Naturalization laws and laws as to nationality. We hold to the rule of *jus soli*, i. e., that nationality is determined by the place of birth. Germany, Austria, Hungary, Norway, Denmark, Switzerland, Serbia, Roumania, and Salvador maintain the doctrine of *jus sanguinis* without qualification. Although these doctrines are contradictory each nation maintains its own rule, thus showing very clearly an important application of the principle of exclusive territorial sovereignty. (Westlake, Int. Law, pt. I, pp. 219-220.)

9. The entire field of private international law reveals a multitude of cases where a nation enforces against aliens rules and principles of law which are directly contradictory to the laws in force in the nation to which the alien belongs. Rights arising in a foreign State may not even be recognized in the sister States.

A contract whether lawful by its proper law or not is invalid if it, or the enforcement thereof, is opposed to English interests of State, or to the policy of English law, or to the moral rules upheld by English law. (A. V. Dicey, Conflict of Laws, p. 540.)

The United States Supreme Court held, in the case of *Hilton v. Guyot* (158 U. S., 113), that a judgment rendered in France was not conclusive as to the merits of the case, but was only *prima facie* evidence of the justice of the plaintiff's claim, such being the rule in France as to the effect of foreign judgments, the rule of reciprocity being thus applied. (Moore, Int. Law Digest, vol. 2, p. 103.)

COROLLARY.

It is submitted that the above-named classes of legislation, resting upon the principle of exclusive territorial sovereignty, are sufficiently analogous to the seamen's bill to clearly establish that it also is not a violation of international law.

Some of the foreign Governments have urged that this bill, if it becomes law, will force or encourage nationals of those Governments to break the laws of

their home countries. This is urged as a reason why this bill is invalid. If this position is well taken, does it not follow that our tariff law would be equally invalid if any nation had a law forbidding its nationals to pay import duties in American ports? True, this is an extreme case, but on principle wherein does it differ? The weakness in these protests is that they are based upon the proposition that a nation does not have complete sovereignty even in its own territory. How can a nation protect, preserve, and perfect itself unless it has such powers? What would quarantine regulation amount to unless we have full control of our own territory? These are doubtless the considerations which lie at the bottom of the American policy on this general subject.

As already stated, the act of February 15, 1893, charged our consuls with the duty of inspecting and disinfecting German vessels in German ports preparatory to the outbound trip to America. Germany objected to this act on the ground that it violated her sovereignty and law. Here was a case where the German Government forbade our officers to do any act which our law compelled them to do. In other words, the German law compelled our officers to break American law. This is the position of the French sailor, under the terms of the seamen's bill, while in an American port. The French law, it has been said, forbids the sailor to accept wages in an American port. Our bill permits him to accept the wages. Two points should be noticed. (1) The proposed legislation does not force the sailor to breach his own native law. (2) Even under the French law there is no legal obstacle to paying French sailors in American ports, provided it is done before a consul or vice consul. (*Guide Pratique Consulats*, by A. de Clercq and C. de Vallat, 5th ed., vol. 2, pp. 182-4, Paris, 1898. Translated in print of Senate Committee on Commerce, 63d, 2d. Print unnumbered.)

In the above-mentioned inspection incident our Government recognized the principle of exclusive territorial sovereignty and informed the German Government that no further enforcement of our statute would be attempted.

The attitude of the United States of the principle of exclusive territorial sovereignty is further shown by section 70 of the Consular Regulations of the United States for the year 1896. This section reads:

"The arms of the United States shall be placed over the entrance to the consulate or commercial agency, unless prohibited by the laws of the country." (Moore, *Int. Law Digest*, vol. 2, 134.)

Thus, even in the foreign consulates, which are in a measure free from territorial sovereignty of the foreign nation we recognize the principle of exclusive territorial sovereignty. Why should the United States deviate from its established policy?

The facts set forth in the foregoing pages are respectfully submitted to all who may feel interested, but more especially to attorneys who may have to deal with this law in the courts, where there are questions raised as to the meaning of any particular section or the validity of the law where it deals with foreign vessels within the waters of the United States. It is also earnestly recommended to such members of the press as may be desirous of obtaining the real purpose of Congress in so far as such was disclosed during the hearings and in documents available. It is submitted also for the earnest consideration of those who are now giving serious consideration to the war.

THE SEAMEN AND THE WAR.

The Government is expending some \$2,000,000,000 to build ships. Ships, ships, and then ships are needed to win the war. (Lloyd George.) This means seamen, seamen, and then seamen. Owing to the peculiarity of their occupation, the number of really trained seamen can not be greatly added to during a war unless it be one of very long duration. But there are thousands of properly trained seamen in the United States. They are working in all kinds of employments. They are generally above the draft age. These men can be brought to the service of the country at sea.

These facts and the reasons for them were laid before the Shipping Board in April last. A meeting of shipowners and seamen was called by the board on May 8, and a tentative agreement was then arrived at. The shipowners gave full consent to the tentative agreement on June 6, but desired to arrange matters with the marine cooks and stewards before entering into a written arrangement. The arrangement was approved by the practically unanimous vote of the seamen by July 1. The information was sent out to the seamen generally, and a large number of seamen were coming back to the sea when the drafting of seamen into the Army began. This acted badly upon the men, and the drift of men from the shore to the sea became more slow. The men expected that the Lake Carriers' Association would be brought into the agreement, and when this did not happen they began to question the good faith of the arrangement.

The following is a copy of agreement between International Seamen's Union, Atlantic district, and shipowners, United States Shipping Board, Secretary of Commerce, and Secretary of Labor:

WASHINGTON, D. C., August 8, 1917.

MEMORANDUM.

The conference between the Shipping Board, committee on shipping of the Council of National Defense, and representatives of the International Seamen's Union was called to order at 9:30 a. m. May 8, 1917. Chairman Denman, of the Shipping Board, was in the chair. Those present in addition were Vice Chairman Brent, Mr. White, and Mr. Stevens, of the Shipping Board; Mr. Raymond, of the Atlantic, Gulf, & West Indies Steamship Lines; P. A. S. Franklin, of the International Mercantile Marine; Mr. Munson, of the Munson Line; Mr. Bull, of the Bull Line; Mr. Sherman, of the Grace Line; Mr. Warden, of the Standard Oil Co.; Commissioner Chamberlain, of the Bureau of Navigation. Representing the organized seamen: President Furuseth, of the International Seamen's Union; H. P. Griffin, G. H. Brown, Oscar Carlson, Dan Ingraham, and P. J. Pryor.

A general synopsis of the conference was as follows:

The representatives of the steamship lines and of the organized seamen agreed with the Shipping Board that some action ought to be taken looking to an increase in the number of seamen in order to furnish men for the vessels trading to England and France carrying supplies and to yet continue an uninterrupted coastwise trade.

To attain this purpose the representatives of the shipping lines in cooperation with the Shipping Board and the organized seamen tentatively agreed to cooperate for the attainment of this end in the following manner:

Substantially all the steamship lines will agree to pay the following wage: Sailors and firemen, \$80 per month; coal passers, \$50 per month; oilers and water tenders, \$65 per month; boatswain, \$70 per month; carpenters, \$75 per month; overtime pay for cargo work, 50 cents; for ship work, 40 cents per hour. Bonus going to the war zone, 50 per cent of the wages; wages and bonus to continue until crew arrive back in the United States; \$100 compensation for loss of effects caused by war conditions. The scale of wages and bonus for cooks and stewards at present in force to be maintained and continued during the continuance of this agreement.

That a certain number of boys, determined by the number of men carried, are to be employed in addition to the usual crew; that a number of ordinary seamen will be employed in proportion to the able seamen carried; taken as an instance, a vessel now carrying 8 men on deck, will carry 6 able seamen, 2 ordinary seamen, and 2 boys; such boys and ordinary seamen to have ample opportunity to learn the work usually demanded of able seamen.

That the representatives of the organized seamen shall have access to and be permitted on docks and vessels during reasonable hours.

The representatives of the seamen tentatively agree to join with the shipowners in an appeal to seamen now employed on shore to come back to the sea.

That the bonus and other conditions arising from the war shall terminate with the war and that the wages set shall remain for one year, to the end that

wages be stabilized and that the men now on shore may be induced to return to the sea.

That the seamen will use earnest efforts in cooperation with the officers to teach seamanship to the boys and ordinary seamen.

That the representatives of the organized seamen reported that this agreement had been put to a vote of their unions and ratified by their membership.

That this agreement is hereby ratified and confirmed on the 8th day of August, 1917.

P. A. S. Franklin; Frank C. Munson; Ernest M. Bull; D. S. War-
den; L. A. Sherman; W. H. Raymond; R. B. Stevens, vice
chairman United States Shipping Board; Andrew Furuseth;
H. P. Griffin; Percy J. Pryor; G. H. Brown; Oscar Carlson.

Approved August 17, 1917.

W. B. WILSON,
Secretary of Labor.

Approved August 17, 1917.

WILLIAM C. REDFIELD,
Secretary of Commerce.

The rearrangement of the crews of vessels, which was to take place to give the young men an opportunity to come to the sea, was not complied with except in the vessels operated by the Shipping Board and in a very few other instances. This again had a bad effect. When the above arrangement was ratified the following call to the sea was in accordance therewith adopted by the committee appointed by the conference of August 1 and 2. It was signed for the committee by the chairman, Hon. George Uhler, Supervising Inspector General, Steamboat-Inspection Service, representing the Department of Commerce, and by the secretary, Hon. A. Warner Parker, law officer, Bureau of Immigration, member for the Department of Labor.

THE NATION'S APPEAL FOR MEN TO MAN ITS MERCHANT SHIPS.

The United States Government, the shipowners, the seamen, jointly issue this call to the sea.

It is a call to men who have lived upon and love the sea, but left it to return. It is a call to young men who have felt the lure of the sea, but resisted it to come now.

The message to those who have left the sea is this: The conditions which caused you to leave no longer exist. Seamen are no longer bound by laws to the vessels on which they serve. The seaman's act has conferred this and many other blessings upon them. Economic and working conditions affecting the calling have been immeasurably improved. Attractive wages are being paid. The importance of the seaman as a factor in the life of the Nation is being recognized. The ancient and honorable profession of seamanship is again coming into its own.

The message to the young man, the novice, is this: You can now give ear to the call of the sea and respond to its lure with confidence that upon the sea a career is again a possibility. The improvement in the conditions affecting the seaman's calling has necessarily increased its opportunities for the ambitious and industrious to secure advancement. Conditions on board vessels have been materially improved. When vessels are in port the seamen are as free as men ashore. Opportunities for learning the duties of the traditionally honorable and important calling of seamen are now to be freely had. The spirit of adventure of the young man should readily respond to this opportunity.

The message to all followers or would-be followers of the sea is this: The United States of America, above all other countries, has proven itself the friend of the seaman. That Nation needs you now. Your "bit" in its service can be a very large factor in the advancement of its interests and in the defense of those principles for which it has always stood. At this particular juncture, when history is being made, you can have a large and creditable share in the making of that history.

Many of those in our country have answered the call to become soldiers or to join the Navy. This is the third call of the country to join in the work on

ships which are carrying the soldiers, the ammunition, and the necessary commerce of the world to all ports. Sailors are as necessary as soldiers. Congress exempted seamen from the draft act, because seamen are giving important military service.

Our country is building many steamers, and it needs the men and the officers to man them as never before. The occupation of seaman affords excellent opportunities for seeing foreign lands and learning languages, as well as opportunities for aiding in the development of our commerce. Join the merchant marine now—serve your country—there is a great future before you on the sea!

An agreement has been reached between the shipowners and the seamen concerning conditions and wages calculated to assure adequate recompense and reasonable comfort to those who return to the sea or for the first time respond to its lure, and such agreement has been countersigned by the Secretary of Labor, the Secretary of Commerce, and the chairman of the Shipping Board of the United States Government.

UP TO THE PRESENT THIS CALL HAS NOT BEEN PROPERLY SIGNED.

To give this call the real effect it must of course be signed by some of the leading shipowners on the Atlantic, the Lakes, and the Pacific. So far the most influential shipowner on the Great Lakes, Mr. Coulby, president of the Pittsburgh Steamship Co., and the dominating spirit in the Lake Carriers' Association, has refused to agree to either give any passes to the officers of the unions to go on the vessels to see the men or to sign the call. The seamen who have left the sea will not come back unless there is distinct evidence of good faith. The call must be signed by representative shipowners, by the officers of the seamen's unions, and by the United States Shipping Board in the same way that the agreement is signed. There must be places made for the young men willing to come to the sea. When this is done the men will come. The people now standing in the way are the officers of the Lake Carriers' Association—Mr. Coulby.

If the call could have been issued in good faith during last summer we should now have at least 10,000 young men, with sufficient training to be shipped as ordinary seamen, together with a large number of men practically ready to go on the new vessels as firemen.

As it now stands the training of seamen begun by Mr. Howard, of Boston, under authority of the Shipping Board, can and will furnish all the young men needed. They can be sent to the vessels as ordinary seamen and coal passers in sufficient numbers to be prepared for the new vessels as they shall be ready, but the experienced seamen can be obtained in no other way except through the call issued in proper form and in good faith. This done and the vessels will be safely manned without depleting the Navy, without any waste of man power or waste of tonnage.

There are now more than 1,500 steamers of 500 tons or over, without counting the vessels joined to the fleet within the last 12 months. If all these vessels can not be induced to take on the proper number of young men, the vessels commandeered by the Shipping Board and running under its orders surely can be induced to provide the places for three or four extra men, especially when some able seamen now carried are laid off. There are more than 1,200 sailing vessels of 200 or more gross tons. Here is opportunity for about 3,000 more young men to learn a seaman's work. There will hardly be any additional expense; but what little there is can surely be borne by the shipowners at this time, when they are making, as they themselves

say, oodles of money. Let the men stay at the school ships in Boston for six or eight weeks and be taught what is possible under the circumstances, then let them be sent to the merchant vessels for the real daily work of a seaman, and we shall have the seamen needed; always provided, that we can get a reasonable number of fully trained seamen now on shore back to the sea. Those men are needed for the safe operation of the vessels and to teach seamanship to the young men.

Seamen are made at sea only. Such is the undisputed verdict of history and of the personal experience of living seamen. This is no time to try over again the failures of other nations in the past nor to save our pet notions or prejudices. The men will be needed. The whole present struggle may depend upon finding the men. If they be not found, it will not be because of any fault or neglect of the seamen. At the last convention of the International Seamen's Union of America, held at Buffalo, N. Y., a few weeks since the national call was indorsed by a unanimous vote of the delegates, who thereupon issued the following call:

To all seafaring men, ashore or afloat:

The International Seamen's Union of America, in annual convention assembled, representing the organized seaman of America, submits the following to all men of seafaring experience ashore or afloat:

The Nation that proclaimed your freedom now needs your services. America is at war. Our troops are being transported over the seas. Munitions and supplies are being shipped in ever-increasing quantities to our armies in Europe. The bases are the ports of America. The battle fields are in Europe. The sea intervenes. Over it the men of the sea must sail the supply ships. A great emergency fleet is now being built. Thousands of skilled seamen, seafaring men of all capacities who left the sea in years gone by as a protest against the serfdom from which no flag then offered relief, have now an opportunity to return to their former calling, sail as free men, and serve our country.

Your old shipmates—men who remained with the ship to win the new status for our craft—now call upon you to again stand by for duty. Your help is needed to prove that no enemy on the seas can stop the ships of the Nation whose seamen bear the responsibility of liberty.

America has the right, a far greater right than any other nation, to call upon the seamen of all the world for service. By responding to this call now you can demonstrate your practical appreciation of freedom won.

Let the shipowners on the Great Lakes do their share, let the agreement entered into and underwritten by the Government be carried out in good faith and the question of men for the Nation's vessels will be solved.

The question about discipline is not worth serious discussion. The law governing the merchant seaman and enforcing discipline on him is sufficiently drastic. If there be any person who doubts this let him look up the law.

**DILLON v. STRATHEARN STEAMSHIP COMPANY,
CLAIMANT OF STEAMSHIP "STRATHEARN."****CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT.**

No. 361. Argued November 5, 1918.—Decided December 23, 1918.

A certificate under Jud. Code, § 239, Rule 37, must state the facts pertinent to the questions certified, and this cannot be dispensed with by reference to the transcript and briefs in the Circuit Court of Appeals, which are no part of the record in this court.

A certificate which fails to comply with the rule in this respect must be dismissed.

Certificate dismissed.

THE case is stated in the opinion.

Mr. W. J. Waggespack and Mr. Silas B. Axtell for Dillon.

Mr. Ralph James M. Bullowa, for Strathearn S. S. Co., submitted.

Mr. Assistant Attorney General Brown, with whom *Mr. Robert Szold* was on the brief, for the United States as *amicus curiae*.

Mr. Frederic R. Coudert and *Mr. Howard Thayer Kingsbury*, for the British Embassy as *amicus curiae*, submitted.

MR. JUSTICE DAY delivered the opinion of the court.

John Dillon, a British subject, filed a libel in admiralty in the United States District Court for the Northern

Opinion of the Court.

District of Florida in which he claimed the sum of \$125.00, alleged to be due him for wages as a carpenter on the steamship "Strathearn." The District Court dismissed the libel. 239 Fed. Rep. 583. An appeal was taken to the Circuit Court of Appeals for the Fifth Circuit. The libel was filed under the provisions of § 4 of the Seaman's Act of 1915, 38 Stat. 1164, 1165.¹

The Circuit Court of Appeals certifies two questions to this court:

"First. Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled 'An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea,' violative of the Constitution of the United States?

"Second. Is section 4530 of the Revised Statutes of the

¹ Sec. 4. That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

"Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: . . . And *provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Opinion of the Court.

248 U. S.

United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides 'That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?'"

The certificate is made under § 239 of the Judicial Code which makes provision for the certification of questions of law to this court from a Circuit Court of Appeals. The section provides that this court may give instruction on the questions certified, or it may order the whole record sent up for consideration and decision. Rule 37 of this court provides that in such cases the certificate shall contain a proper statement of the facts on which the questions of law arise. The certificate in this case fails to comply with this rule of court. It contains a partial statement of Dillon's contract with the ship. It states that no part of the sum sued for was due under the shipping articles signed by Dillon. It does not state the terms of payment agreed upon, when or where payments were to be made under the contract, or what advancements, if any, were to be made during the voyage. The certificate concludes: "For information as to the facts of the case copies of the transcript and briefs are herewith transmitted." Counsel argue the case by reference to the transcript of the record in the Circuit Court of Appeals, and it is apparent that a proper consideration of the case requires such reference. This transcript is no part of our record. This court alone has authority to have it sent up. The briefs in the Circuit Court of Appeals are no part of the record here. The certificate is required to state the pertinent facts in order that this court may answer the questions of law certified with reference to such facts, and not by searching the records and briefs of the Circuit Court of Appeals itself.

The certificate therefore fails to comply with our rule,

182.

Syllabus.

and in accordance with the established practice must be dismissed. *Cincinnati, Hamilton & Dayton R. R. Co. v. McKeen*, 149 U. S. 259, 261; *Stratton's Independence v. Howbert*, 231 U. S. 399, 422, and cases cited.

Dismissed.

(26,402)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 935.

ERIK SANDBERG, CARL JANNSON, S. K. BENJAMINSEN,
AND JOHN PERANEN, PETITIONERS,

v.

JOHN McDONALD, CLAIMANT OF THE BRITISH SHIP
"TALUS."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Wednesday, November 21st, A. D. 1917, at New Orleans, Louisiana, Before the Honorable Richard W. Walker and the Honorable Robert L. Batts, Circuit Judges, and the Honorable William I. Grubb, District Judge.

JOHN McDONALD, Claimant of Ship "Talus," Appellant,
versus

ERIK SANDBERG et als., Appellees.

Be it remembered, that heretofore, to-wit, on the 23d day of July, b
A. D. 1917, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Southern District of Alabama, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3119, as follows:

c TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3119.

JOHN McDONALD, Claimant of Ship Talus, Appellant,
versus

ERIK SANDBERG et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Alabama.

U. S. Circuit Court of Appeals. Filed Jul- 23, 1917. Frank H. Mortimer, clerk.

1

Name of Court, Style of Cause, etc.

District Court of the United States for the Southern District of Alabama.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSEN and JOHN PERANEN

versus

SHIP TALUS, JOHN McDONALD, Claimant and Principal on the Claim Bond and James J. Feore and A. L. Staples, Sureties on said Claim Bond.

Notice of Libel Filed and Marshal's Return.

UNITED STATES OF AMERICA:

District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

versus

SHIP TALUS.

To the Master of said vessel:

You are hereby notified that the above named Erik Sandberg and five others have this day filed in my office as clerk of said court a libel against said vessel for wages in the sum of \$306.93.

You are required to forthwith call at my office as such clerk and give the necessary bonds in the cause or otherwise arrange the matter, in default of so doing a Writ of Seizure will issue and said vessel seized by the United States marshal.

2 The United States Marshal of this district, or any of his deputies, will forthwith execute this notice and make return thereof according to law.

Witness my hand this 23rd day of February A. D. 1917.

RICHARD JONES, Clerk.

Received in office February 24, 1917, and executed by serving a copy hereof on Capt. McDonell, Master, February 24, 1917.

C. C. GEWIN,

U. S. Marshal,

By D. D. HORTON, Deputy.

Filed February 28, 1917. Richard Jones, Clerk.

Claim.

District Court of the United States for the Southern District of Alabama, Southern Division.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

versus.

SHIP TALUS.

Comes John McDonald, master of said ship Talus, and for J. P. Murphy, owner thereof, intervenes herein and claims possession of said vessel and says that said J. P. Murphy, in whose behalf this claim is made, is the true and bona fide owner of said vessel, and that no other persons are the owners thereof. And claimant further says that he is duly authorized to make this claim for and on behalf of said owner.

JOHN McDONALD.

Subscribed and sworn to before me this 26th day of February A. D. 1917.

LEO M. FLYNN,
Deputy Clerk.

Filed this 26th day of February, 1917. Richard Jones, Clerk, by Leo M. Flynn, Deputy.

3

Claim Bond.

District Court of the United States for the Southern District of Alabama, Southern Division.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

vs.

SHIP TALUS.

Know All Men by These Presents, That we, John McDonald and James J. Feore and A. L. Staples are held and firmly bound unto Erik Sandberg et al. in the sum of Six Hundred and Thirteen and 88-100 Dollars (\$613.86) lawful money of the United States of America, to be paid to the said Erik Sandberg et al., their executors, administrators, or assigns, to which payment well and truly to be made, we hereby bind ourselves and each of us, jointly and severally, one and each of our executors, administrators, heirs, or assigns, firmly

by these presents. Signed and sealed by us on this 26th day of February A. D. 1917.

Whereas, a libel was filed in this Court and cause on the 23rd day of February A. D. 1917, by the said Erik Sandberg et al. against the said ship *Talus*, in an action civil and maritime for \$306.93 therein alleged to be due and owing to said libellants; now, therefore, the condition of this obligation is that if the above bounden John McDonald, James J. Feore and A. L. Staples shall abide and answer the decree of this court in the premises, or upon appeal, of the appellate court, this obligation to become null and void, otherwise to be and remain in full force and effect.

JOHN McDONALD. [SEAL.]
JAMES J. FEORE. [SEAL.]
A. L. STAPLES. [SEAL.]

Signed, sealed and acknowledged before me this 26th day of February, 1917.

LEO M. FLYNN,
Deputy Clerk.

Filed this 26th day of February, 1917. Richard Jones, Clerk,
by Leo M. Flynn, Deputy Clerk.

4

Libel.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Southern District
of Alabama, Southern Division.

In Admiralty—No. 1642.

ERIK SANDBERG et al., Libellants,

vs.

BRITISH SHIP TALUS.

To the Honorable Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama, Sitting in Admiralty:

The libel of Erik Sandberg, Carl Jansson, Magnus Person, Andreas Evanger, S. K. Benjaminsen and John Peranen against the British full-rigged ship *Talus*, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of wages, civil and maritime, alleges as follows:

First—That on towit the 8th day of November, 1916, libellant, John Peranen, was employed by the said ship's agents to perform the services of a second-mate; on towit November 30, 1916, libellants Erik Sandberg, Carl Jansson and Magnus Person were employed by the said agents to work on said ship as seamen; and on towit

Dec. 6 libellants, Andreas Evanger and S. K. Benjaminsen were employed by the said agents to perform the services of seamen aboard said ship. All of the libellants were employed in Liverpool, and the said ship arrived in Mobile February 13, 1916, and is loading timber, and is bound for a port in the British Isles. Libellants Sandberg, Jansson and Person were promised seven pounds per month; Evanger and Benjaminsen seven pounds and ten shillings, and as second mate Peranen was promised twelve pounds; and libellants aver that they have well and truly performed the services for which they were thus employed; and Person further shows that on 5 towit Dec. 12 he was made boatswain, and was promised one pound additional per month, and that he had well and truly performed the services to which he was thus promoted.

Second—That the said ship Talus is now lying at docks in the City of Mobile, in the division and district aforesaid, and is within the admiralty and maritime jurisdiction of this honorable court.

Third—That on towit the 22nd day of February, 1916, in the said Port of Mobile your libellants demanded from the master of the said ship one-half of the wages to which they were entitled under the Seamen's Act, but the master refused to pay them such half portion of the wages earned by them without deducting therefrom certain monies paid to them at Liverpool by way of advances, but stated to libellants that in paying them wages he would take into account such advances; and whilst libellants admit the receipt of such advances and of further payments en route and in the Port of Mobile, they aver that the master has wholly neglected and refused to pay them the one-half wages to which they are entitled under said Seaman's Act.

Fourth—Libellants show further that after deducting said advances and all of the sums received by them on account of their said wages that they are now entitled to be paid the following sums respectively, in American money:

Erik Sandberg	\$40.10
Carl Jansson	\$44.80
S. K. Benjaminsen	\$37.35
Magnus Person	\$55.43
Andreas Evanger	\$49.20
John Peranen	\$80.05

	\$306.93

This, because they claim that because of the master's said refusal to comply with said Seaman's Act and to pay them the half of their wages aforesaid, they are now fully discharged from their contract, and ought to be paid such wages in full.

That all and singular the premises are true and within 6 the admiralty and maritime jurisdiction of this honorable court.

Wherefore, libellants pray that process in due form of law, according to the course and practice of this honorable court, as a court of

admiralty and maritime jurisdiction may issue against the said ship Talus, her tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this honorable court may be pleased to decree in favor of libellants, the payment of the several sums hereinbefore claimed, and that the said ship may be condemned and sold to pay libellants' costs and demands, and may further decree that your libellants are forever discharged from any further obligations under their said contract.

ERIK SANDBERG.
CARL A. JANSSON.
MAGNUS PERSSON.
ANDREAS EVANGER.
S. K. BENJAMINSEN.
JOHN PERANEN.

ALEX HOWARD,
Proctor for Libellants.

Before me, Richard Jones, Clerk of the said court, personally appeared Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. BenjaminSEN and John Peranen, the libellants named in the above and foregoing libel, who being by me, first duly sworn, upon their respective oaths, depose and say that they know the facts set forth in the above and foregoing libel, and that the same are true; deponents further depose and say that because of their poverty they are unable to give security for the costs or to prepay the costs of instituting and prosecuting the said libel, and pray that they may be allowed to prosecute the same without giving any security therefor; and they further show that they are not residents of the United States of America, but are citizens of various foreign lands, and pray
7 the leave of this honorable court to be permitted to have their cause determined by it in forma pauperis.

ERIK SANDBERG.
CARL A. JANSSON.
MAGNUS PERSSON.
ANDREAS EVANGER.
S. K. BENJAMINSEN.
JOHN PERANEN.

Subscribed and sworn to before me this 23rd day of February, 1917.

RICHARD JONES, Clerk.

Filed February 23, 1917. Richard Jones, Clerk.

Amendment to Libel.

In the District Court of the United States for the Southern District of Alabama, Southern Division.

In Admiralty.

ERIK SANDBERG et al., Libellants,

vs.

BRITISH SHIP TALUS.

To the Honorable Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama, Sitting in Admiralty:

Comes libellant, Magnus Persson, and by leave of the court first obtained, amends the third paragraph of the libel in the above entitled cause insofar as it relates to his cause of action by saying that the allegations thereof with regard to the alleged advances did not apply to him for that he did not receive advances as averred therein in any sum whatsoever, but avers that his libel is filed for the reason that on, towit, the said 22nd day of February, 1916, he made demand upon the master to pay to him one-half of the wages to which he was then and there entitled under the Seaman's Act, but that
the master then and there wholly neglected and refused to
8 pay said one-half portion of his wages, and that the master's said refusal was not based upon any deduction from his wages or any advances which had been paid to your libellant, but was an out and out refusal on the master's part to pay said one-half portion.

And libellant further says that the balance of the allegations contained in said libel are true, and that he admits the receipt of the payments on account set forth therein.

MAGNUS PERSSON.

ALEX HOWARD,
Proctor for Libellant.

Before me, Virgil Griffin, Clerk of said Court, personally appeared Magnus Persson, who being by me first duly sworn, upon his oath, deposes and says that the facts set forth in the foregoing amendment to the libel in said cause, are true.

MAGNUS PERSSON.

Subscribed and sworn to before me this 3rd day of March, 1917.
VIRGIL C. GRIFFIN, *Clerk.*

Filed March 5, 1917, by leave of court. Virgil C. Griffin, Clerk,
by Leo M. Flynn, Deputy Clerk.

Answer.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

vs.

BRITISH SHIP TALUS.

The answer of John A. MacDonald, claimant of the said ship Talus to the libel of Erik Sandberg, Carl Jansson, Magnus Person, Andreas Evanger, S. K. Benjaminson, and John Perannen,
9 against said ship and to said libel as amended by amendment filed March 5, 1917, respectfully alleges:

First. The claimant admits the allegations of the first paragraph of the original libel, and further shows that the said ship Talus is a British ship duly registered under the laws of the Kingdom of Great Britain and Ireland; that each and all of the libellants are citizens of nations other than the United States of America; and that each and all of the libellants were employed by said ship while she was within the territorial waters of, and within the jurisdiction of, said Kingdom of Great Britain and Ireland, to-wit: in the Port of Liverpool, England, and further that the services for compensation for which this libel is filed were performed by libellants while said ship was within the territorial waters of said Kingdom, or while she was on the high seas, and that said services were not performed either in the territorial waters of, or within the jurisdiction of, the United States, except for to-wit: 11 days, from February 11, 1917, when said ship arrived at Fort Morgan, Alabama, whence she immediately proceeded to the Port of Mobile, to February 22, 1917, during the greater portion of which time said ship was at said Port of Mobile; and that an amount equal to or greater than one-half of any sum of money earned by any and all of the libellants during said last mentioned days was paid to the libellants, respectively, before the filing of this libel.

Second. Claimant admits the allegations of the second paragraph of the original libel.

Third. In answer to the third paragraph of the libel as originally filed and as amended, claimant admits that the master of said ship refused to pay the libellants, with the exception of Libellants Person and Evanger, as hereinafter shown, one-half of the money earned by such libellants, without deducting therefrom the advances made to said respective libellants in Liverpool, England. The claimant shows that said advances were made in good faith by the ship Talus, a British ship, at the request of the respective libellants, while the

10 ship was in the Port of Liverpool and under and in pursuance to a lawful custom universally obtaining there among British ships to make such advances to an amount equal to or greater than the amount advanced by the ship *Talus* to these libellants respectively; and that under this custom it is lawful, proper and usual to deduct the amount of such advances from any sums thereafter earned by the seamen respectively. Claimant further shows that after deducting such advances and the moneys and the value of articles received by the libellants respectively from the ship on account of their services after the commencement of their services the ship paid, prior to the filing of the libel, to each of said libellants respectively, on demand, one-half of the sum then earned by such libellants respectively. And claimant denies that the master of the ship has ever failed or refused, on demand, to pay to said libellants or any of them, one-half of the sum then earned by the libellant making such demand, provided the amount of such advance was lawfully deducted from the half of such wages.

The exceptions noted above are: First, that Libellant Persson received no advances in Liverpool, and claimant shows that said Person, on demand and before the filing of the libel, received one-half of the wages then earned by him after deducting the money and the value of articles received by him from the ship after the commencement of his services and proper charges for his loss of time through absence from the ship while in Mobile. The second exception is that Libellant Evanger, irrespective of the advance made to him while in Liverpool and without deducting such advance, received from the ship, on demand and prior to the filing of the libel, an amount equal to or greater than the amount of wages then earned by him after deducting the money and the value of articles received by him from the ship after the commencement of his services and proper charges for loss of time by him through his absence from the ship while in Mobile. And claimant denies that the master of the ship ever refused, on demand, to pay to said Libellants Persson and Evanger, or to either of them, one-half of the wages then earned by said libellants respectively, without deducting therefrom the wages advanced at Liverpool.

11 Fourth. Claimant denies the allegations of the fourth paragraph of the original libel, and alleges the truth to be that no sum is now due the libellants, or any of them, because upon the payment to them, respectively, of the half of their wages earned by them at the time of their demand therefor, the advances made in Liverpool having been deducted from said one-half except in the cases of Libellants Persson and Evanger, as shown above, each and all of the said libellants, without exception, deserted the ship *Talus*, and were duly logged as such deserters on the same day, to-wit: the 24th day of February, 1917, and claimant charges that said libellants, by such desertion, forfeited all wages then earned by them and then due to them.

And having fully answered this libel, claimant prays that said libel be dismissed with costs, and that the ship Talus be released.

JOSEPH N. McALEER,
JAMES H. KIRKPATRICK,
Proctors for Claimant.

SOUTHERN DISTRICT OF ALABAMA,
Southern Division:

Before Deputy Clerk of the District Court of the United States for the Southern District of Alabama, personally appeared John A. McDonald, who, being by me first duly sworn, deposes and says that he is the master of the British ship Talus; that the claimant and owner of said ship, Joseph G. Murphy, is a non-resident of the United States, residing in the Dominion of Canada; that affiant is authorized to make the above answer on behalf of said claimant of said ship, and that the facts set up therein are true to the best of the knowledge, information and belief of the affiant.

JOHN A. McDONALD.

Subscribed and sworn to before me this 5th day of April, 1917.

LEO M. FLYNN,

*Deputy Clerk of the District Court of the United
States for the Southern District of Alabama.*

Filed April 5, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn,
Deputy Clerk.

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Opinion.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

vs.

BRITISH SHIP TALUS.

Alex Howard, Proctor for Libellants,
Joe N. McAleer and Jas. H. Kirkpatrick, Proctors for Claimant.

The libel in this case was filed by the seamen claiming one-half part of the wages which they had earned up to the time of their demand for such part of their wages.

It appears that the libellants were shipped as seamen aboard the British ship Talus in Liverpool, England, and began their services about the first of December, 1916; that the vessel arrived in this port on February 11, and the men were paid some money on account of their wages; that about the 22nd day of February, 1917, libellants,

in the Port of Mobile, demanded one-half part of the wages which they had then earned, and this demand was refused by the master of the *Talus*, he claiming that the libellants had been paid more than one-half part of the wages then earned by them, because there had been advanced to the libellants, certain sums, when they signed in England.

The question therefore, is the same one presented and ruled on by me in the case of *Koskiner vs. The Imberhorne*, 240 Fed., in which case, I held that under the provisions of the Seaman's Act, the vessel could not charge against the one-half part of the wages earned by the sailor, an advance made in England at the time of the sailors being signed.

I am now asked to reconsider my conclusion reached in the *Imberhorne* case, and it is urged upon me that under the provisions of

13 Sections 4530 of the Seaman's Act, that the only part of the wages which the seaman, shipped in a foreign country, is entitled to demand in this country of a foreign vessel, is one-half part of such wages as may have been earned after such foreign vessel reaches her port in this country.

The various admiralty courts in this country have had presented to them for consideration many phases of the Seaman's Act, and it is natural that there has been some differences of opinion in its construction.

In the case of *The Strathearn*, 239 Fed. 583, the libel was dismissed by the judge because he held the demand for wages was made by the seamen before they had been five days in the port of Pensacola. This holding is along the same line as the contention that is now urged upon me, but I cannot agree to that contention.

The whole question depends, of course, upon the proper construction of the terms of the Seaman's Act, as found in 38 Statutes at Large, 1164, which reads as follows:

"Section 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand, from the master of the vessel to which he belongs, one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void; Provided, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of wages earned. * * * And Provided Further, that this section shall apply to seamen of foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." (Bold-faced type mine).

14 "Sec. 10(a) That it shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a

seaman's wages. Any person violating any of the foregoing provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25.00 nor more than \$100.00, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defence to a libel suit or action for the recovery of such wages."

Let us now analyze the language of this Act.

It will be noted in the first place that the Act does not give to the seaman one-half part of such wages as he may earn in every port where such vessel shall load or deliver cargo. The language is that he shall be entitled to receive on demand one-half part of the wages which he shall have then earned. If it had been intended to give to the seaman only a half of such wages as he should earn in each port where the vessel receives or delivers cargo, the language would have been entirely different, and instead of saying the seaman was entitled to one-half part of the wages which he shall have then earned it would have provided that he was entitled to receive one-half part of such wages as he may earn in any port where such vessel received or delivered cargo.

The use of the expression "one-half part of the wages which he shall have then earned" can only indicate that it was the intention of Congress to give seamen the right to demand one-half of 15 all the wages which such seamen shall have then earned at the time of the demand made.

I grant that there is some confusion in the way the Act is worded because of the placing of the words "at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended." It is hard to word a statute so as to make its provisions absolutely plain and simple and avoid more than one construction, and in wording a statute, words are sometimes put into it in a parenthetic way in a part of a sentence which makes confusion, when they could have been transposed so as to make the meaning more clear.

My own idea is that the words "at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo" were intended to designate the places at which the seamen would have the right to demand their wages, and were not intended to indicate the place at which such wages were earned by the seamen.

Omitting certain of the words for the purpose of making my construction of the statute clear, I rearrange the terms of this part of the Act, so as to express my conclusion as to its meaning, and as so rearranged, it would read as follows:

"A seaman shall be entitled to receive on demand at each port where such vessel shall load or deliver cargo, one-half part of the wages which he shall have then earned. Provided, such demand shall not be made before the expiration of, and not oftener than once in five days."

Again, the whole act must be construed together in order to determine the meaning of any portions thereof, which may be doubtful, if construed alone.

In Section 10, I find the following provisions: "The payment of such advance wages or allotment, shall not in any case, except as hereafter provided, abeolve the vessel, or the master, or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defence to a libel suit or action for the recovery of such wages."

16 The reference here about the full payment of wages, "after the same shall have been actually earned," it seems to me, shows that the words used in Section 4530 necessarily have reference to the total wages earned at the time the demand is made, and not to such wages as may be earned by the seaman after the vessel arrives in a port of this country for the purpose of loading or discharging cargo.

I therefore hold that the Act gives to every seaman the right to demand from the vessel at each port where such vessel, during her voyage, loads or delivers cargo, one-half of such wages as the seaman shall, at the time of such demand, have earned; that such seaman cannot demand any wages until at least five days' service has been rendered; that he cannot thereafter again demand the half part of such wages as may be subsequently earned until five days have elapsed from the last or prior payment of one-half of his wages.

I do not think that the vessel must be in port five days before the seaman can make his demand, provided there has been five days or more of service by the sailor since he signed.

I think the words "Provided, such demand shall not be made before the expiration of, nor oftener than once in five days" mean shall not be made before the expiration of five days of service, during which, wages were earned, and not oftener than once in each five days thereafter.

The Jacob N. Haskell, 235 Fed. 914.

The London, 238 Fed. 645.

The rights of a seaman in this country are controlled by this act, and not by the flag of the vessel on which he is serving.

The Ixion, 237 Fed. 142.

As I am asked to review the conclusion I reached in the Imber-horne case, and after considering the matter, I still think the conclusion there reached was correct, and as this case may be taken up, and that one was not, I will here quote from my opinion in the Imber-

17 horne case the portions which set out my views as to the reasons advances made by a foreign ship in a foreign port to the sailors when there signed, cannot be allowed when the sailor here claims the half part of such wages as he may have earned when he reaches this port.

I there said:

"The Supreme Court in the case of Patterson vs. Bark Endora, 190 U. S. 189, says: 'Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects

itself to the jurisdiction of this country. * * * It follows from these decisions that it is within the power of Congress to prescribe the penal provisions of Section 10, and no one within the jurisdiction of the United States can escape liability for a violation of these provisions on the plea that he is a foreign citizen or an officer of a foreign merchant vessel. It also follows that it is a duty of the courts of the United States to give full force and effect to such provisions. It is not pretended that this Government can control the action of foreign tribunals. In any case presented to them, they will be guided by their own views of the law and its scope and effect, but the courts of the United States are bound to accept this legislation and enforce it whenever its provisions are violated. * * * And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign, as well as, domestic vessels. Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions, the courts are not at liberty to dispense with.'

It is true here, the court was passing upon a shipment of seamen made within this country, but the language used certainly carries with it the idea that regardless of whether the shipment may have been made here or elsewhere, that when the vessel comes here,
18 it immediately becomes subject to our laws on this question.

This must be necessarily true, because the same court on page 173 says: 'When, as here the statute declares in plain words its intent in reference to a pre-payment of seamen's wages, and follows that declaration with a further statement that the rule thus announced shall apply to foreign vessels as well as to vessels of the United States, it would do violence to language to say that it was not applicable to a foreign vessel.' That court follows this statement by holding that this enactment is not invalid, because invasive of the liberty of contract guaranteed by our Constitution.

This brings us to the main question in the case.

In the case of The State of Maine, 22 Fed. 733, Judge Brown, in construing the Dingley Bill, holds that where advances were made to the seamen in a foreign jurisdiction in order to induce them to sign, such advance is not included under the prohibitory clause of the Act, and hence, such advance on wages should be deducted from the one-half of the wages earned by the seamen. His opinion is strongly and clearly written, and I agree in the main with what he there says in holding that the penalties declared by this Act cannot be imposed upon the master or the vessel for acts done in a foreign jurisdiction.

The Dingley Bill was amended by what is commonly called "The Seaman's Act," but the provisions of the Dingley Bill as to forbidding advances on seamen's wages do not seem to be changed by the amendment. The question in my mind is one that does not seem to have been considered by Judge Brown, and is, whether the provisions of Section 10 of the Dingley Bill as amended by the Seaman's Act,

19 does not lay down a rule which a judge in this country is bound to follow in passing upon how one-half of the wages of a seaman is to be calculated? In other words, that even

though the penalties declared by the Act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seaman's wages that have been earned, we are directed by the terms of the Act to exclude any advances which may have been made by the ship to the seaman, whether made in a foreign jurisdiction or not, and we must follow this rule in calculating the wages of the seaman when a libel is filed in the admiralty courts of this country.

Section 4530 says: 'Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs, one-half part of the wages which shall have then — earned at every port where such vessel, after the voyage is commenced shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void.'

Section 10 (a) of the Dingley Act as amended, provides: 'that it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen, when payment is deducted or to be deducted from a seaman's wages. * * * The payment of such advance wages or allotment shall in no case except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.' (Bold-faced type mine.)

20 Section 10 (e) as amended, reads: 'That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States.'

In considering the question of whether or not the advance on the wages which has been made in a foreign jurisdiction should be excluded, I am struck in the first place with the statement contained in Section 10 (a), 'The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.'

Now, in the first place, here is a direct instruction to the court to reject the advance on the trial of this question, and the language seems to me to necessarily exclude the advance, because it says: 'In no case' is the advance to be allowed.

We are necessarily bound to concede that the Act is to have some force, even though the shipping of the seaman and the advance on his wages was made in a foreign port, because the provision requiring the payment of one-half of the wages earned by the seaman is before the court for enforcement and this provision is to be enforced, notwithstanding the fact that the seaman was shipped in a foreign jurisdiction. If then, some part of this Act is applicable on this state of facts, then the question is how far the provisions of the Act shall be applied. What provisions of the Act are applicable and what provisions are inapplicable on this state of facts? If we should say that because the seamen were shipped in a foreign jurisdiction, none of

the provisions of the Act are applicable we would have an entirely different question because we would be controlled, not by the provisions of the Act, but by the General Maritime Law; but 21 the moment that we concede that the seaman, under the provisions of this Act, is entitled to the payment of one-half of the wages he may have earned, then it seems to me that we must also concede that the other provision of the Act which rejects the advance on the wages must also be in force no matter where such advances may have been made, and to my mind, the provisions of Section 10 (a) lays down the law which this court is bound to follow.

Again, it will be noticed that the advance to the seaman on his wages before the same have been earned is declared by the Act to be unlawful. Certainly, it cannot be contemplated that the courts of this country would enforce an agreement or transaction which Congress has declared to be unlawful here, even though such agreement or transaction was not unlawful where the same transpired. Such agreement or transaction would still be unlawful here.

2nd Chitty on Contracts, 972, 11 American Edition,

In my opinion, when a libel is filed in the United States by a seaman seeking to recover one-half of the wages earned by him, and it is shown that there has been paid to such seaman in a foreign port an advance on his wages, this court is bound by the provisions above quoted to reject the advance in ascertaining the one-half of the seaman's wages which now may be due him.

Tending to further support the construction which I have given to this Act, it occurs to me that the provisions of Section 16 of the Seaman's Act which provides, 'That in the judgment of Congress, articles in treaties and conventions of the United States, in so far as they provide * * * and any other treaty provision in conflict

22 with the provisions of this Act, ought to be terminated, and to this end, the President be, and he is hereby requested and directed, within ninety days after the passage of this Act, to give notice to the several Governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods after notices have been given, as may be required in such treaties and conventions.' Certainly, unless Congress intended these provisions to be applicable in the United States, it would not require the President to take steps to abrogate any treaty provisions which were in conflict with the provisions of this Act."

Upon considering the evidence as to the amounts earned by each of the libellants and the amounts paid them, exclusive of the advances made at the time of shipment, I find that Magnus Person and Andreas Evanger had, at the time of making their demand for one-half of their wages on February 22, 1917, been already paid more than the one-half of their wages earned up to that time, so that they were not entitled, at that time, to demand anything of the vessel.

As the demand in each of these cases was not justified, and as each of these seamen abandoned the vessel when further payment to them was refused, I find that they have deserted the vessel, and are not en-

titled to receive anything from the vessel, so that the libel is hereby dismissed as to Magnus Persson and Andreas Evanger.

As to Erik Sandberg, I find that this man, at the time he made his demand on February 22, 1917, had earned \$90.85; that he had been paid \$37.34; that there was owing to him \$8.09. I find that the captain of the vessel refused to pay him anything on account of his wages because the vessel had advanced him at the time of signing \$19.00.

I therefore find that the vessel wrongfully refused to pay him, and
23 that under the terms of the Act, he is entitled to his discharge,
and to all of the balance of the wages then earned by him,
which amount to \$58.51, exclusive of the \$19.00 advanced to
him.

As to Carl Jannson, I find that at the time he made his demand, for one-half of his wages on February 22, 1917, he had earned \$90.85; that there had been then paid to him by the vessel \$39.49; that there was then due him \$5.94 as a balance of the one-half of wages then due him. I further find, that when he made his demand on February 22, 1917, the captain of the vessel refused to pay him anything because the vessel had advanced to him, at the time he signed \$9.50.

I therefore find that the vessel wrongfully refused to pay him, and that under the terms of the Act, he is entitled to his discharge, and to all of the balance of the wages then earned by him, which amount to \$51.36, exclusive of the \$9.50 advanced to him.

As to S. K. Benjaminsen, I find that at the time he made his demand for one-half of his wages on February 22, 1917, he had earned \$90.10; that there had been then paid to him by the vessel \$26.19; that there was then due him \$18.86 as a balance of the one-half of wages then due him. I further find, that when he made his demand on February 22, 1917, the captain of the vessel refused to pay him anything because the vessel had advanced to him, at the time he signed \$28.50.

I therefore find that the vessel wrongfully refused to pay him, and that under the terms of the Act, he is entitled to his discharge, and to all of the balance of the wages then earned by him, which amount to \$63.91, exclusive of the \$28.50 advanced to him.

As to John Perannen, I find that at the time he made his demand, for one-half of his wages on February 22, 1917, he had earned \$201.40; that there had been then paid to him by the vessel \$78.23; that there was then due him as a balance of one-half of the wages due him \$21.47; I further find, that when he made his demand on February 22, 1917, the captain of the vessel refused to pay him anything because the vessel had advanced to him, at the time he signed \$52.25.

I therefore find that the vessel wrongfully refused to pay
24 him, and that under the terms of the Act, he is entitled to his
discharge, and to all of the balance of the wages then earned
by him, which amount to \$123.17, exclusive of the \$52.25 advanced
to him.

As to Erik Sandberg, Carl Jannson, S. K. Benjaminsen and John Peranen, they are hereby discharged from the S. S. Talus, and de-

crees will be entered in their behalf against said vessel for the amounts found due them.

ROBERT T. ERVIN, *Judge.*

May 26, 1917.

Filed May 26, 1917. Virgil C. Griffin, Clerk.

Final Decree.

District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

versus

BRITISH SHIP TALUS.

This cause coming on to be heard and being considered by the court,

It is ordered, adjudged and decreed that the libel as to Magnus Pesson and Andreas Evanger be and the same is hereby dismissed.

It is further ordered, adjudged and decreed that Erik Sandberg do have and recover of said British Ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51); that Carl Jannison do have and recover from said British Ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36); that S. K. Benjaminsen do have and recover of the British Ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91); that John Perannen do have and recover of the said British Ship Talus the sum of One Hundred Twenty-three and 17-100 Dollars (\$123.17).

25 It is further ordered that unless the above named amounts are paid within ten (10) days from the date hereof together with the costs of this cause as taxed that execution shall issue against the stipulators on the claim bond and the stipulators on the cost bond respectively.

Made this 26th day of May, A. D. 1917.

ROBERT T. ERVIN, *Judge.*

Filed and entered May 26, 1917. Virgil C. Griffin, Clerk.

Agreed Statement of Facts.

District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG et al.

versus

BRITISH SHIP TALUS.

It is hereby agreed, by and between the parties to this cause by their respective proctors of record, with the approval of the Judge of said District Court, that the following is a full and true statement of the facts upon which this case was decided in the said District Court, and that this agreed statement of facts shall be incorporated in the record of this cause on appeal to the Circuit Court of Appeals for the Fifth Circuit, as all of the evidence in this cause, in lieu of all depositions herein taken.

District Court of the United States for the Southern District of Alabama.

ERIK SANDBERG et al.

vs.

BRITISH SHIP TALUS.

That at the time of all the matters herein set forth, the
26 libellants were all citizens or subjects of nations other than these United States, and the ship Talus was a British ship duly registered as such.

That all of the libellants were employed by the ship as seamen at Liverpool, in the Kingdom of Great Britain and Ireland, and that at the time of such employment and before boarding the ship or performing any service for it, they were all made certain advances at Liverpool by the ship or its agents.

That the making of such advances in the ports of Great Britain and Ireland to the amount of one month's wages is not forbidden by the laws of that Kingdom and is usual and customary; and that the advances in this case did not, as to any libellant, exceed the amount of one month's wages.

That the libellants boarded the ship Talus at Dublin, Ireland, another port of said Kingdom, on December 1, 1916, and remained in its service until they left it at Mobile, Alabama, as hereinafter shown.

That the ship Talus sailed from Dublin to the Barbadoes and thence to Mobile, Alabama, arriving in American waters for the first time during this voyage on February 11, 1917, off Fort Morgan, Alabama.

That the ship Talus proceeded immediately from Fort Morgan to Mobile, where she unloaded and loaded cargoes, and where she remained until after February 24, 1917.

That during the voyage, and at Barbadoes, and at Mobile prior to February 22, 1917, the libellants had received certain payments from the ship Talus, in cash and in articles purchased from it, which are the prior and undisputed credits hereinafter referred to.

That on February 22, 1917, the libellants demanded of the master of the ship Talus the payment of the one-half of the wages earned by them to that date; that no point is or was made as to the demand being made on the legal holiday by the claimant-appellant.

That the master of said ship Talus then paid to the libellants a sum which, with prior and undisputed credits and also with the said advances at Liverpool, equalled or exceeded, as to each

27 libellant, the one-half of the wages then earned by such libellant from the commencement of his service for the ship, but which was less than such one-half wages if the advances at Liverpool are not included in this total of credits against the half wages of such libellant; that the said master claimed that the advances at Liverpool should be deducted from the one-half wages and refused to pay such one-half wages without deducting such advances and in paying the libellants, he did in fact deduct such advances.

That the last paragraph above applies to the four successful libellants only, the District Court having found that, as to the other two libellants, they had received from the ship one-half of their wages irrespective of and without deducting such advances.

That the sum or sums paid by the master at Mobile to the libellants, in the case of all libellants, exceeded the amount of wages earned by the libellants for the eleven days the ship had then been in American waters.

That on February 23, 1917, the libellants filed their libel against the ship Talus, and that not having performed any further service for the ship since their said demand, they did, on February 24, 1917, quit the said ship and remove their clothes and effects from it, and that they were duly logged as deserters on the same day.

That the amounts found by the District Court to be due and set forth in its decree of May 26, 1917, are in all cases correct, if said District Court was correct in holding that the said advances at Liverpool should not be deducted from the said one-half wages; if the said District Court erred in said holding, then that the proper decree would have been one dismissing the libel as to all libellants.

ALEX HOWARD,

Proctor for Libellants-Appellees.

JOSEPH N. McALEER,

JAMES H. KIRKPATRICK,

Proctors for Claimant-Appellant.

28 Examined and approved this 19th day of June, 1917.
ROBERT T. ERVIN, Judge.

Filed July 3, 1917. Virgil C. Griffin, Clerk. By Leo M. Flynn,
Deputy Clerk.

Assignment of Errors.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty.

No. 1842.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSON and JOHN PERANEN

vs.

THE BRITISH SHIP TALUS. In Rem. John MacDonald, Claimant.

Comes John MacDonald, claimant of the British ship Talus, which claimant has concurrently herewith prayed and taken an appeal from the final decree rendered in the said cause against him and the sureties on his claim bond given for the release of the vessel, and against him and the sureties on his cost bond given in the above entitled cause, and the said John MacDonald, claimant of the said British ship Talus, says and shows that in the record and proceedings of the Court in said cause there is manifest error, and as grounds therefor this claimant assigns the following, separately and severally:

1. The District Court erred in adjudging the libellant, Erik Sandberg, entitled to recover of said British ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51).

2. The District Court erred in adjudging the libellant, Carl Jansson, entitled to recover of said British ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36).

3. The District Court erred in adjudging the libellant, S. K. Benjaminson, entitled to recover of said British ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91).

29 4. The District Court erred in adjudging the libellant, John Peranen, entitled to recover of said British Ship Talus the sum of One Hundred and Twenty-three and 17-100 Dollars (\$123.17).

5. The District Court erred in adjudging the libellant, Erik Sandberg, entitled to recover of said British ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51); the District Court erred in adjudging the libellant, Carl Jannson, entitled to recover of said British ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36); the District Court erred in adjudging the libellant, S. K. Benjaminson entitled to recover of the British ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91); the District Court erred in adjudging the libellant, John Peranen, entitled to recover of said British ship Talus the sum of One Hundred and Twenty-three and 17-100 Dollars (\$123.17).

6. That said District Court erred in taxing the costs of said cause against this claimant and the other stipulators on the claim bond.

7. Because said District Court erred in not deducting the advances made by the ship Talus at Liverpool, England, to the respective libellants, from the one-half of the wages earned by said libellants respectively at the date of their demand for such one-half wages.

8. Because said District Court erred in not dismissing the libel as to all of the libellants.

9. Because said District Court erred in entering the final decree by it entered in this case, on the proof in this case:

JOSEPH N. McALEER,

JAMES H. KIRKPATRICK,

Proctors for Claimant, John MacDonald.

Filed July 3, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn,
Deputy Clerk.

30

Petition for Appeal.

In the District Court of the United States for the Southern District
of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS
EVANGER, S. K. BENJAMINSON and JOHN PERANEN

vs.

The BRITISH SHIP TALUS. In Rem. John MacDonald, Claimant.

The said John MacDonald, claimant of the said British ship Talus, considering himself aggrieved by the order and decree made and entered in the above styled cause on the 26th day of May, 1917, wherein and whereby it was ordered, adjudged and decreed that the libel as to Magnus Persson and Andreas Evanger be dismissed, and that Erik Sandberg should have and recover of said Britiah ship Talus the sum of Fifty-three and 51-100 Dollars (\$53.51); that Carl Jannson should have and recover of the said British ship Talus the sum of Fifty-one and 36-100 Dollars (\$51.36); that said S. K. Benjaminson should have and recover of said British ship Talus the sum of Sixty-three and 91-100 Dollars (\$63.91); and that said John Peranen should have and recover of said British ship Talus the sum of One Hundred Twenty-three and 17-100 Dollars (\$123.17); and also taying the costs in this cause against this claimant and the other stipulators on the cost bond in this cause; does hereby appeal from said order and decree of May 26, 1917, as aforesaid, to the United States Circuit Court of Appeals for the Fifth Circuit. Said John MacDonald files herewith an assignment of errors in said cause, and bases his appeal on the reasons therein specified, and prays that this appeal may be allowed, and that a

transcript of the record, papers and proceedings in which said order
and decree were made, duly authenticated, may be sent to
31 the said United States Circuit Court of Appeals for the Fifth
Circuit.

JOSEPH N. McALEER,
JAMES H. KIRKPATRICK,
Proctors for John MacDonald,
Claimant of the British Ship Talus.

Filed July 3, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn,
Deputy Clerk.

Decree Allowing Appeal.

In the District Court of the United States for the Southern District
of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS
EVANGER, S. K. BENJAMINSON and JOHN PERANEN, Libellants,

versus

The BRITISH SHIP TALUS. In Rem. John McDonald, Claimant.

On motion of the proctors for the said John McDonald, claimant
of the British ship Talus, for an order allowing an appeal, it appearing
to the court that the said John McDonald has filed in this cause
his assignment of errors and a petition praying an appeal to the
United States Circuit Court of Appeals for the Fifth Circuit, from
the final decree rendered herein on the 26th day of May, 1917; it is
ordered and decreed by the court that the appeal prayed be and the
same hereby is allowed.

It is further ordered that the bond for costs and damages on ap-
peal be and the same is hereby fixed at Two Hundred Fifty Dollars
(\$250.00), and that, upon the execution and proper filing of the said
bond, the said decree so appealed from, being the said decree of May
26, 1917, be and the same hereby is superseded to await the decision
32 of the United States Circuit Court of Appeals for the Fifth
Circuit.

Made July 3, 1917.

ROBERT T. ERVIN, Judge.

Filed and entered July 3, 1917. Virgil C. Griffin, Clerk.

Appeal Bond.

In the District Court of the United States for the Southern District of Alabama.

In Admiralty—No. 1642.

ERIK SANDBERG, CARL JANNSON, MAGNUS PERSSON, ANDREAS EVANGER, S. K. BENJAMINSON and JOHN PERANEN, Libellants,

versus

THE BRITISH SHIP TALUS, in Rem. John McDonald, Claimant.

Be it known that we, John McDonald, as claimant of the British Ship Talus, as principal, and A. L. Staples and H. B. Pake, as sureties, are held and firmly bound unto Erik Sandberg, Carl Jansson, S. K. Benjaminson and John Perannen, as libellants, who were successful, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said obligees in the bond, all or any of them as the determination of the Appellate Court may require, or their or any of their executors, administrators, or assigns, and for the payment of which we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally firmly by these presents.

In testimony whereof, we have hereunto set our hands and seals this 17th day of July, 1917.

The Condition of this Obligation is Such, that whereas lately on to-wit the 26th day of May, 1917, at a session of the District Court of the United States for the Southern District of Alabama, Southern Division, in a cause then pending in said court, and entitled as above in which cause the said Erik Sandberg, Carl Jansson, Magnus Persson, Andreas Evanger, S. K. Benjaminson and John Perannen were libellants, the British Ship Talus was used in rem, and the said John McDonald was the claimant of said ship; a decree was rendered against the said ship in favor of the said libellant, Erik Sandberg, for the sum of Fifty-three and 51-100 Dollars (\$53.51), in favor of the said Libellant, Carl Jansson, in the sum of Fifty-one and 38-100 Dollars (\$53.36), in favor of the said libellant, S. K. Benjaminson, in the sum of Sixty-three and 91-100 Dollars (\$63.91), and in favor of the said libellant, John Perannen, in the sum of One Hundred Twenty-three and 17-100 Dollars (\$123.17), and all costs of said proceeding, but dismissing the libel as to libellants, Magnus Persson and Andreas Evanger; and whereas the said John McDonald has obtained from the said court an order allowing an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the said decree in the said District Court.

Now, therefore, if the said John McDonald shall prosecute his said appeal to effect and shall answer all costs and damages that may be awarded against him if he should fail to make said appeal good, then

the above obligation shall be void; otherwise it shall be and remain of full force and effect.

JOHN McDONALD. [SEAL.]
 A. L. STAPLES. [SEAL.]
 H. B. PAKE. [SEAL.]

Approved July 17, 1917.

ROBERT T. ERVIN, *Judge.*

Filed July 17, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn,
 Deputy Clerk.

Citation.

UNITED STATES OF AMERICA, ss:

The President of the United States to Erik Sandberg, Carl Jannson,
 Magnus Persson, Andreas Evanger, S. K. Benjaminson and John
 Peranen, Greeting:

34 You and each of you are hereby cited and admonished to
 be and appear in the United States Circuit Court of Appeals
 for the Fifth Circuit within thirty (30) days from the date
 hereof pursuant to an appeal allowed by the District Court of the
 United States for the Southern District of Alabama, in Admiralty
 Cause No. 1642, Erik Sandberg et al. versus Ship Talus, John Mc-
 Donald, Claimant, and wherein said John McDonald, as Claimant
 of said Ship Talus, is Appellant, and you, said Erik Sandberg et al.,
 are Appellees, to show cause if any there be, why the judgment in
 said appeal mentioned should not be corrected and full and speedy
 justice done to the parties in that behalf.

Witness the Honorable Robert T. Ervin, Judge of the District
 Court of the United States for the Southern District of Alabama,
 this 17th day of July A. D. 1917.

ROBERT T. ERVIN,
U. S. District Judge, Southern District of Alabama.

Attest:

VIRGIL C. GRIFFIN,
*Clerk U. S. District Court,
 Southern District of Alabama.*

Service of the above citation accepted this 17th day of July A. D.
 1917, and a copy of same received.

ALEX T. HOWARD,
Proctor for Erik Sandberg et al., Appellees.

Filed July 17, 1917. Virgil C. Griffin, Clerk, by Leo M. Flynn,
 Deputy Clerk.

35

*Certificate.***UNITED STATES OF AMERICA:****District Court of the United States for the Southern District of Alabama.**

I, Virgil C. Griffin, Clerk of said Court, do hereby certify that the foregoing 34 pages, numbered 1 to 34, contain a true and correct transcript of the record and proceedings had in said court in Admiralty Case No. 1642, wherein Erik Sandberg et al. are libellants and Ship Talus, John McDonald, Claimant thereof, is defendant, as fully as the same remain of record and file in my office as such clerk.

In testimony whereof, I hereto set my hand and affix the seal of said Court at the City of Mobile, Alabama, this 21st day of July A. D. 1917.

[SEAL.]

VIRGIL C. GRIFFIN, Clerk.

36 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and Submission.***Extract from the Minutes of January 16, 1918.****No. 3119.****JOHN McDONALD, Claimant of Ship "Talus,"****versus****ERIK SANDBERG et al.**

On this day this cause was called, and, after argument by Palmer Pillans, Esq., for appellant, and Alex T. Howard, Esq., for appellees, was submitted to the Court.

Opinion of the Court.

Filed January 25th, 1918.

In the United States Circuit Court of Appeals, Fifth Circuit.

3119.

JOHN McDONALD, Claimant of the British Ship "Talus," Appellant,

v.

ERIK SANDBERG et als., Appellees.

Appeal from the District Court of the United States for the Southern District of Alabama.

Joseph N. McAleer, J. H. Kirkpatrick and Palmer Pillans (M. V. Hanaw, of counsel), for appellant.

Alex T. Howard, for appellees.

Before Walker and Batts, Circuit Judges, and Grubb, District Judge.

GRUBB, *District Judge*, delivered the opinion of the Court.

This is an appeal from a final decree in admiralty against the appellant, as claimant of the ship Talus, and in favor of certain seamen for the amount of wages alleged to be due them. The libel was originally filed on behalf of six seamen; the court below dismissed the libel as to two, and from its decree in this respect, no appeal was taken by them. In favor of the remaining four a decree was rendered for the respective amounts found due them, and from 38 this part of the decree, the appeal was taken by the claimant.

The facts were stipulated in the record, and the appeal presents for decision the proper construction of Section 11, in connection with Section 4, of the Act of Congress, approved March 4, 1915, 38 Statutes at Large, 1164-1185, entitled "An Act To promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea." The sections involved are those which prohibit the making of certain advances to seamen before the commencement of the voyage for which they ship, and which require that half their earned wages be paid, upon arrival of the ship in any port where it receives or delivers cargo, with certain limitations.

The Talus was a British ship, which sailed from the port of Liverpool to Mobile upon the voyage in question. The libellants were British subjects, and the advances, which are questioned, were made to them in Liverpool at the time they were shipped and were valid

under the laws of Great Britain. The District Judge disallowed the advances in reckoning the amount due libellants, and it is conceded that had the advances been taken into account, or if only wages earned by appellants while the ship was in the port of Mobile had been considered, there would have been nothing due libellants at the time of their demand, and that the libel should stand dismissed; and on the other hand, that if wages earned from the time of sailing from Liverpool are to be considered, and if the advances there made were properly ignored by the District Court, the decree as there rendered should be here affirmed.

Section 4 of the Act of March 4, 1915, commonly known as the "LaFollette Act," is found on page 1165 of Volume 38 of the Statutes at Large, and is as follows:

39 "Sec. 4. That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

'Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages, which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: Provided further, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.'"

Section 11 of the same is found on page 1168 of the same volume, and the material subdivisions of the section are the following:

"(a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the

vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense 40 be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.00
* * *

"(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

The appellants first contend that the decree was erroneous because they contend that Section 4 of the Act, in providing that the seaman is entitled "to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned, at every port where such vessel, after the voyage has been commenced shall load or deliver cargo, before the voyage is ended," only requires the master to pay one-half of the wages earned by the seaman from the time of the arrival of the ship in such a port until the demand. We think the plain purpose of Congress was to allow the seamen the benefit of half of his earned wages, less payments, upon each occasion upon which the statute permits him to demand them from the commencement of the voyage to the time of demand, and that the words of the statute "then earned" are not limited by the succeeding words "at every port" but that the function of the latter is to describe the place of legal demand only. Absence of punctuation between the words "then earned" and the words "at every port" is of little persuasiveness as against the evident intent of Congress. The probable brief duration of a ship's stay in intermediate ports and the small amount of probable wages there earned by the seamen, would make the required payments of little value to them.

41 The appellant's further contention is that the District Court erroneously refused to consider as a proper deduction from the earned wages of libellants certain advances made them by the master in Liverpool, when they were engaged. The statute says that a seaman is to be paid on demand "one-half part of the wages which he shall then have earned." That previous lawful payments should be first deducted, is conceded. Otherwise the law might require the master to pay to the seaman before the voyage was complete more than the amount stipulated to be paid for the whole voyage.

The word "earned" is used in the sense of owing. Congress avoided the use of the word "due," as there might by the terms of the contract between the ship and the seaman be no wages due till the end of the voyage. The use of the word "earned" was to describe wages, for which the seaman has done the work, whether then due or not, and not to fix the amount of what was owing and half of which was to be paid, regardless of previous lawful payments. The question remains whether advances made the libellants by the master in Liverpool are legal payments. Had they been made in an American port, though by a foreign ship and to foreign seamen, the language of Section 11 of the Act would have invalidated such advances as payments. *Patterson v. Bark Eudora*, 190 U. S., 169. The question is whether the language of the Section prohibits the making of advances in foreign ports by foreign ships to foreign sailors. The case cited is limited in its effect and language to advances made within the territorial jurisdiction of the United States. It is competent for Congress to prescribe conditions of entry to and clearance from its own ports by foreign vessels since it may exclude them altogether. The section under construction, however, does more than that. Section (e) provides that this section "shall apply, as well to foreign vessels, while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

If this section of the Act applies to advances made by a master, owner, or agent of a foreign ship in a foreign port, its effects would be to render such master, owner, or agent guilty of a misdemeanor and subject him to prosecution and punishment, if found in this country, for an act done without the jurisdiction of this country, and which was a lawful act where done. The competency of Congress to so enact is of such grave doubt that a court would not construe the language of an Act to that effect, unless forced so to do. The language of Section 11 does not require such an unreasonable construction. Indeed the words of subdivision (e) of the Section, "shall apply as well to foreign vessels, while in waters of the United States, as to vessels of the United States," would seem to imply the contrary. We think the reasonable construction of the Section is that it covers only such advances as it was within the competency of Congress to criminally punish the making of, viz: advances made within the territorial waters and jurisdiction of this country by whomever made and to whomever paid. This gives the Section a legitimate field of operation. It was the purpose of Congress to protect American seamen, as far as it had jurisdiction to act. In doing so, in order to avoid discrimination against American ships, it was necessary to include foreign ships and sailors under like circumstances. There was, however, no policy to be subserved in the interest of foreign sailors, so far as the title to the Act shows, and the debate upon it in Congress. In protecting American sailors on American ships in foreign ports, the same question of discrimination against American ships would be encountered. Congress might have treated it, by imposing

as a condition upon the entry to and clearance from American ports of both foreign and domestic vessels, that all advances, which
43 were made to seamen in a foreign port before the voyage began, should be agreed by the ship to be disregarded in settlements required by the law to be made with seamen in the ports of this country. Instead of doing so, it went further and provided that every advance, prohibited by the Act, including those made by the agents, owners or masters of foreign ships, should be punishable as a misdemeanor. Its determination to make the criminal penalty cover all advances prohibited by the Section indicates that its intention was to limit the scope of the prohibited advances to its undoubtedly competency in that respect, i. e., to such as were made within its undoubtedly jurisdiction to punish crimes. It also prevents a construction that would separate the penalty provision from any class of the prohibited advances, and so sustain the law in other respects as to the class of advances to which the penalties are legally inapplicable; since the penalty provision is as wide as the prohibition itself and covers every advance, whether made by a domestic or foreign ship which is prohibited by the terms of the Act. Probably Congress felt that the sanction of criminal penalties would be more effective than the prescribing of mere civil conditions, and for that reason confined its legislation to advances made under conditions which gave it jurisdiction to punish the making of them criminally. The provisions of the Section, when so construed, are broad enough to fully protect American sailors in American ports, and possibly in foreign ports, and it was not essential to the end in view to include advances to foreign sailors on foreign ships in foreign ports. The debates in the Senate show no wider purpose to have been in the purview of the legislators. The abrogation of existing treaties was necessary, though the scope of the Act was confined to advances made in American ports, both for the purpose of transferring wage disputes on foreign vessels to the courts of the United States from the consular courts of the treaty nations, as provided for in
44 Section 4 of the Act, and to enable the provisions of the law with regard to arrests for desertion to be executed without conflicting with existing treaties. Provisions in the Act to that end do not support appellees' contention.

It is further contended that, though the statute is not itself applicable to advances made in foreign ports to foreign seamen by foreign ships, it outlines a policy against the making of such advances anywhere, and that pursuing that policy, the courts of the United States will not recognize such advances. The case of Arden Lumber Company v. Henderson Iron Works, 83 Ark. 240, is cited by appellees in support of this contention. The policy of the United States respecting advances to seamen is only exhibited by the Section of the Act in question and the corresponding sections of its predecessors, and, in all these acts, as we construe them, this policy was confined to advances made to American seamen and to foreign seamen, only while in American ports. No policy against the making of advances to foreign seamen in foreign ports by foreign ships, where the law of the country permits it, can be deduced from them; nor do the

debates in Congress upon the La Follette bill show a wider purpose than the protection of American seamen against advances, the inclusion of foreign ships and seamen being incidental only and to avoid discrimination against American ships. The usual rule is that where a contract involves no moral turpitude, but is malum prohibitum only, if it is valid where made, it will be held valid in the courts of the United States elsewhere than where it was made, when rights are predicated upon it, though it would be invalid if made there. *Ward v. Vosburgh*, 31 Fed. 12; *Lehman v. Feld*, 37 Fed. 832; *Wilhite v. Houston*, 200 Fed. 390; *Berry v. Chase*, 146 Fed. 625.

Our conclusion is that the District Court erred in its construction of the Act and in disallowing the advances. The decisions 45 of the District Courts are in conflict. The Case of the State of Maine, 22 Fed. 734, supports the views we have expressed. The cases of *The Rhine*, 244 Fed. 833, and of *The Delagoa*, 244 Fed. 835, and possibly the case of *The Ixion*, 237 Fed. 142, adopt the view taken by the District Judge in this case.

It follows that the decree of the District Court must be reversed and the cause remanded with directions to that court to enter a decree dismissing the libel as to all the libellants and taxing appellees with the costs of the appeal, and it is so

Ordered.

Judgment.

Extract from the Minutes of January 25th, 1918.

No. 3119.

JOHN McDONALD, Claimant of Ship "Talus,"

versus

ERIK SANDBERG et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby reversed; and that this cause be, and it is hereby remanded to the said District Court with directions to enter a decree dismissing the libel as to all the libellants and taxing appellees with the costs of the appeal;

It is further ordered, adjudged and decreed that the appellees, Erik Sandberg, Carl Jansson, S. K. Benjaminson, and John Perannen, be condemned, in solido, to pay the costs of this cause 46 in this Court, for which execution may be issued out of the said District Court.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 36 to 46 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3119, wherein John McDonald, Claimant of Ship Talus, is appellant, and Erik Sandberg et al. are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 35 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 28th day of February, A. D. 1918.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
*Clerk of the United States Circuit
Court of Appeals.*

47 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3119.

JOHN McDONALD, Claimant of the British Ship "Talus," Appellant,

VERSUS

ERIK SANDBERG et als., Appellees.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 10th day of April, A. D. 1918, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

United States Circuit Court of Appeals, Fifth Circuit.

No. 3119.

JOHN McDONALD, Claimant of the British Ship "Talus,"
versus
ERIK SANDBERG et als.

It is hereby stipulated and agreed by and between counsel for the parties to the above cause that the transcript of the record in said cause filed in the Supreme Court with the application for certiorari may be taken as a return to the writ of certiorari and that no new transcript shall be made.

Witness our hands this 9th day of April, 1918.

(Signed) W. J. WAGUESPACK,

(Signed) ALEX T. HOWARD,

Proctors for Petitioners, Appellees.

(Signed) PALMER PILLANS,
For the "Talus."

I further certify that the above is a true and correct copy
 48 of said Stipulation, and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 10th day of April, A. D. 1918.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

49 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which John McDonald, Claimant of the British Ship "Talus," is appellant, and Erik Sandberg et al. are appellees, No. 3119, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of Alabama, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command

50 you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

51 [Endorsed:] File No. 26402. Supreme Court of the United States, October Term, 1917. No. 935. Erik Sandberg et al. vs. John McDonald, Claimant, etc. Writ of Certiorari. # 3119. Filed 10th day of April, 1918. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

52 [Endorsed:] 935/26402. United States Circuit Court of Appeals for the Fifth Circuit. No. 3119. John McDonald, Claimant of the British Ship "Talus," Appellant, vs. Erik Sandberg et als., Appellees. Writ of Certiorari, and Return thereto.

53 [Endorsed:] File No. 26402. Supreme Court U. S., October term, 1917. Term No. 935. Erik Sandberg et al., Petitioners, vs. John McDonald, Claimant, etc. Writ of certiorari and return. Filed April 18, 1918.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No. 935

ERIK SANDBERG, ET ALS,

(Libellants) Petitioners

VS.

JOHN McDONALD, CLAIMANT OF

THE BRITISH SHIP "TALUS"

(Defendant) Respondent

Come the Petitioners, Erik Sandberg and others, and move this Honorable Court to advance this cause upon the docket and set the same down for hearing on October 14th, 1918, or upon a day as near thereto as the court may deem meet, upon the following grounds:

The court on April 1st, 1918, granted a petition for a writ of certiorari herein, directed to the United States Circuit Court of Appeals for the Fifth Circuit. The case presents for decision the construction of Section 11, in connection with

Section 4, of the Act of Congress, Approved March 4th, 1915, commonly referred to as the "Seamen's Act" and found in 38 Statutes at Large 1164-1185. This court has seen fit to advance for argument on the above date of October 14th, 1918, the case of Dillon vs. Strathearn Steamship Company, Ltd., Claimant of the Steamship "Strathearn," which case also presents for decision the construction of one of the same sections, viz., Section 4 of the "Seamen's Act." There is also certified to this Honorable Court in said cause the question of the constitutionality of said Section 4 of the "Seamen's Act" and as both cases present in part the same question it would conserve the time and labor of the court to pass upon them together.

ALEX. T. HOWARD,
Proctor for the Petitioners.

NOTICE OF MOTION.

Messrs Joseph N. McAleer, James H. Kirkpatrick, Palmer Pillans and M. V. Hanaw, Proctors for Respondent:

Please take notice that the foregoing motion will be submitted to the Supreme Court of the United States at Washington, D. C., on Monday, the 15th day of April, 1918, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated April 8th, 1918.

ALEX. T. HOWARD,
Proctor for the Petitioners.

I hereby accept service of a copy of the foregoing motion this 8th day of April, 1918, and concur therein.

PALMER PILLANS.
Of Counsel for the Respondent.

Office Supreme Court, U. S.

FILED

NOV 4 1918

JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1918.

No. 392

**ERIK SANDBERG, ET AL. (LIBELLANTS),
Petitioners,**

versus

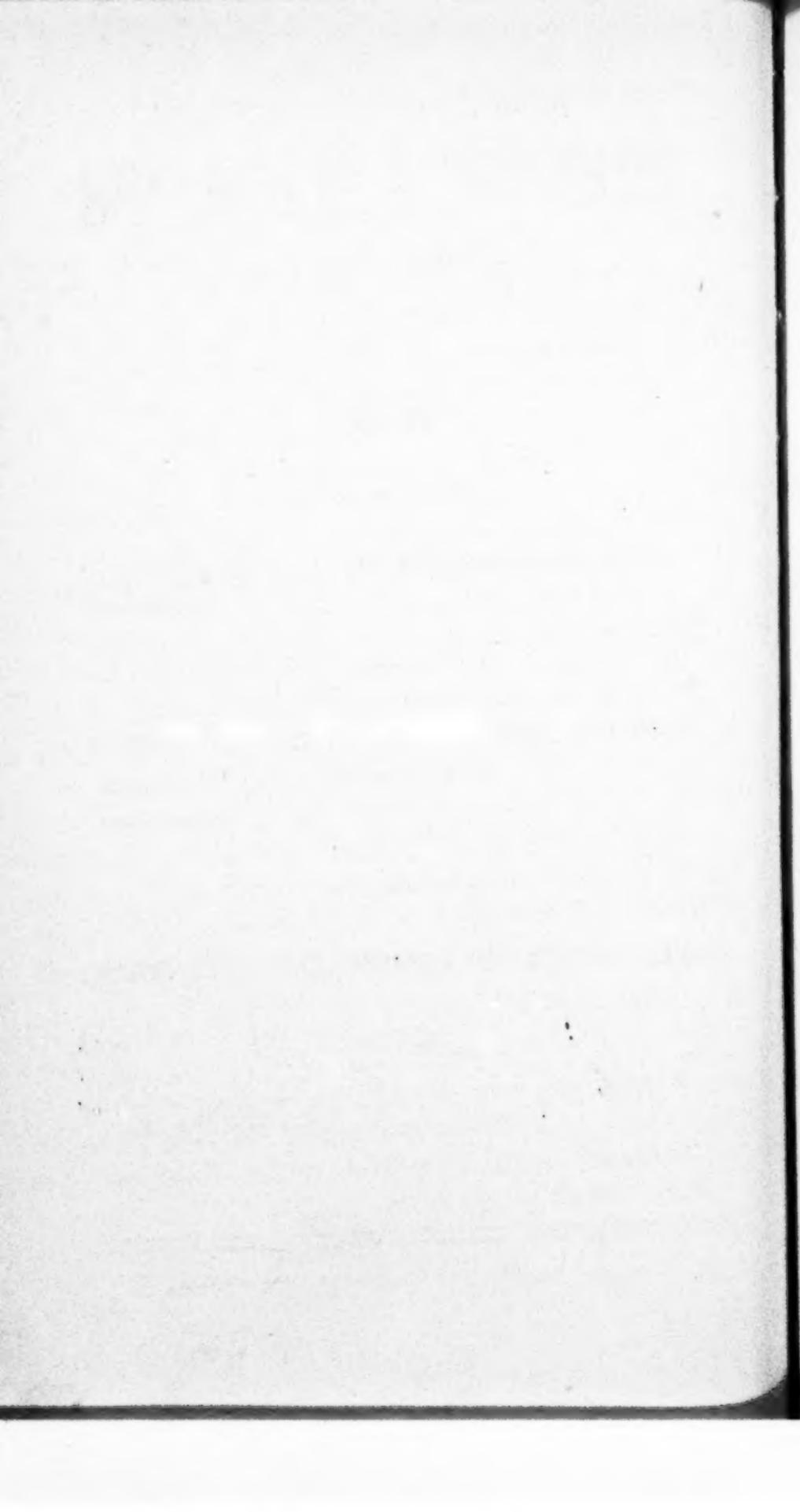
**JOHN McDONALD, CAIMANT OF THE BRITISH
SHIP "TALUS,"**

Respondent.

REPLY TO BRIEF OF COUNSEL FOR DEFENDANT.

**W. J. WAGUESPACK,
Of Counsel.**

E. P. Andree Ptg. Co., 516 Natchez St., New Orleans, La.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1918.

No. 392

ERIK SANDBERG, ET ALS. (LIBELLANTS),
Petitioners,

versus

JOHN McDONALD, CAIMANT OF THE BRITISH
SHIP "TALUS,"

Respondent.

REPLY TO BRIEF OF COUNSEL FOR DEFENDANT.

With due deference to the learned counsel for defendant, the issues of this case have been confused, we think, by the lengthy discussion in his brief of questions which were not in controversy, so that it becomes necessary to state the precise questions in controversy, which are:

1st. Is Congress vested with power to impose upon foreign vessels when they enter into the ports of the United States to load and deliver cargo and while in the waters of the United States, not only the duty of paying one-half of the wages of seamen on demand as a condition of entry, but to impose the further condition that, all advancements made to seamen on foreign soil, before any wages have been earned, shall not be deducted in the computation of the amount payable on demand and shall not be a defense to a libel for the recovery of said wages?

2nd. If Congress has such power did it exercise it legally by the enactment of Section 11 of the Seamen's Act?

3rd. If by construction of Section 11 Congress did not specifically include foreign advancements, did it not establish a public policy against making advancements everywhere which our Courts must enforce to safeguard the interest of our own citizens?

4th. If Congress did not so exercise such powers, as applied to foreign advancements, is not the deduction, or recovery of such advancements, as a remedial right, instead of a substantive right, regulated and determinable by the laws of the forum, whenever a libel in the Courts of the United States is filed by a seaman for his wages?

FIRST POINT.

There can be no controversy as to this proposition, for all the authorities, including the Court *a qua*, agree that Congress has such powers.

- The Eudora*, 190 U. S., 169.
Wildenhus's Case, 120 U. S., 1-11.
The Exchange, 7 Cranch., 116.
Oceanic Steamship Nav. Co. v. Stranahan, 214 U. S., 320.
Buttfield v. Stranahan, 192 U. S., 470.
Turner v. Williams, 194 U. S., 279.
Weber v. Freed, 239 U. S., 325, 329.
The Talus, Fed. Rep., 248, p. 670.

SECOND POINT.

The learned counsel contends that Congress has no extraterritorial powers to impose a penalty for the act of making advances upon foreign soil, and that, therefore, that portion of Section 11 which makes it

"unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same",

was beyond the power of Congress.

But, Section 11 imposes as a condition of entrance,

"that the payment of such advance wages shall 'in no case' absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and 'shall be no defense to a libel suit or action for the recovery of such wages.'"

Counsel cannot seriously contend that these provisions, whenever the foreign vessels come into our ports to load and deliver cargo and while in the waters of the

United States, as conditions of entrance, are not within the legislative authority, notwithstanding that the advances were made in a foreign country and were lawful there for the reason that no one can have a vested right of contract or property to enter into American ports to trade in disregard of the conditions attached to such entry.

The Eudora, 190 U. S., 169.

Oceanic Steamship Nav. Co. v. Stranahan, 214 U. S., 320.

But, the learned counsel says, the words "while in the waters of the United States" which were not in the Act of 1898 are "mere idle verbiage if they were not intended to confine the condemnation of advances to advances made within the territorial jurisdiction of the United States." The answer is found in the legislative history of Section 11, which demonstrates that Congress intended that the act should cover advances made abroad. Brief of Attorney General, pp. 42, 43, 44. The words "while in the waters of the United States" should, moreover, be read in the light of the provisions of Section 4 with which Section 11 is correlated and of which it is the complement, for it is manifest that without the enforcement of the provisions against advances made in foreign ports, the provisions of Section 4 as applied to foreign seamen shipped in foreign ports could easily be nullified as is demonstrated by the facts of this very case.

But, says the learned Counsel:

"It should be noted that it is not the payment of advance wages, without more, that it is declared

shall in no case absolve the vessel, but the payment of such advance wages that shall in no case absolve. What does such refer to? Unlawful advancements, of course, and no advancements are such unlawful advancements unless they are made within the territorial jurisdiction of the United States."

But it should be noted also that there are in Section 11 two clauses reading such advance wages, one in subdivision "a" and this in subdivision "e", and that both manifestly relate to and qualify the same character of advances. And what advances? Manifestly advances made before the wages have been actually earned as distinguished from advances made after the wages have been actually earned but before they are actually due, for, in every shipping contract it is stipulated that no wages shall be due before the termination of the contract, which is, as a rule, for a period of three years. This is the only interpretation of the word "such" which harmonizes with the legislative history of the act, and the latter negatives the learned counsel's interpretation.

And finally adopting the argument of the Circuit Court, the learned counsel contends that, as Congress cannot make it unlawful to do an act in another sovereignty, it has, by making advancements of wages unlawful, indicated its intention to limit the scope of the prohibited advances to the territorial jurisdiction of the United States.

We think we have answered this point fully and satisfactorily on page 10 of our original brief, for it will be seen that the criminal penalty provision of the statute and the civil provision are not indivisible, but on the contrary are

divisible and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated, for the civil provision is independent and is complete in itself and can be enforced in this case. See authorities on page 10 of libellant's original brief. Moreover, the cases of *Knott v. Botany Mills*, 179 U. S., 69; and *United States v. Twenty-five Packages of Hats*, 231 U. S., 358, are "precise precedents" in support of the contention that the criminal provision affords no sufficient reason for refusing to give full effect to the civil provisions.

Every objection interposed by the learned counsel, therefore, we think, has been answered, but our contention goes further, although that may not be necessary, for, conceding that Congress cannot prohibit the act itself of paying advanced wages upon foreign soil, Congress can, under the ruling in *Freeman v. United States*, 239 U. S., 117, prohibit by criminal penalty as a continuous act, the entry of vessels into our ports to load and deliver cargo with seamen of lower standard, affected and tainted with the continuous condition of involuntary servitude and economical bondage arising from the payment of advanced wages in foreign countries which enter with them into our ports when they come into competition with American seamen, because that tends to defeat the object which Congress had in view in enacting this statute, as is so clearly demonstrated in this very case; *United States v. Chavez*, 228 U. S., 525. See original brief, pages 7, 8, 9. Also *Oceanic Steamship Nav. Co. v. Stranahan*, 214 U. S., 320.

United States v. Nord Deutscher Lloyd, 223 U. S., 512.

But, says the learned counsel for defendant:

"Libellants had earned, when the ship came into the waters of the United States, more than the amount of the advances, and, therefore, the relation of debtor to creditor had ceased to exist."

Nothing could better illustrate the wisdom of the provision, for notwithstanding that libellants had earned sufficient wages to extinguish the relation of debtor and creditor, they were still debtors for the advances and it was the deduction of the advances which kept them in financial bondage and defeated the purpose which Congress had in view by depriving them of the privilege extended to them by Section 4.

It is patent that the provision against advances was intended to stand as a barrier simultaneously against the crimping system and against any violation of Section 4.

THIRD POINT.

No further discussion of this point is necessary for the legislative history of the act demonstrates that the construction adopted by the Court of Appeals would not only operate injuriously against the interest of our own citizens but defeat the purpose of the act, and the point has been discussed fully in all the briefs of counsel.

FOURTH POINT.

It is obvious that the advance of wages in Liverpool before the wages were earned was not a payment for the reason that payment implies a debt and there can be no pay-

ment of that which is not due. *Tennessee Bond Cases*, 114 U. S., 663. *Bouvier's Dictionary*. This advancement was, therefore, in the nature of a loan with the implied obligation on the part of the seaman to return the amount when a settlement should be made. The relation of debtor and creditor was thereby created between the master and the seamen, which was a debt or a substantive right; but the master's right to claim a reduction or set-off or compensation of this debt whenever a settlement was to be made, is not a substantive right but a remedial right, for it is a right to the remedy of compensation or set-off or counterclaim and it is entirely distinct from the substantive right arising from the relation of debtor and creditor which is the debt. But the Seamen's Act provides that the payment of advance wages shall be no defense to a libel, suit, or action for the recovery of such wages. In other words, the statute denies to the master the remedy of compensation, set-off or counter-claim; but remedies or remedial rights are regulated and determinable by the law of the forum and not by the law of the contract.

Pritchard v. Norton, 106 U. S., 133.

Story on Conflict of Laws, 574.

Scudder v. Union Nat. Bank, 91 U. S., 406.

Ogden v. Saunders, 12 Wheaton, 212.

Marson v. Haile, 12 Wheaton, 370.

It is well established that a set-off or compensation of distinct causes of action between parties in the suit is regulated by the law of the forum.

Story on Conflict of Laws, Sec. 574.

Gibbs v. Howard, 2 N. H., 296.

Ruggles v. Keyler, 3 Johns N. Y., 263.

Hence, even under the restricted construction placed by the Court of Appeals, its judgment would be erroneous, for it is the law of the forum and not the law of the contract which must determine whether the advances should be credited.

WERE LIBELLANTS DESERTERS?

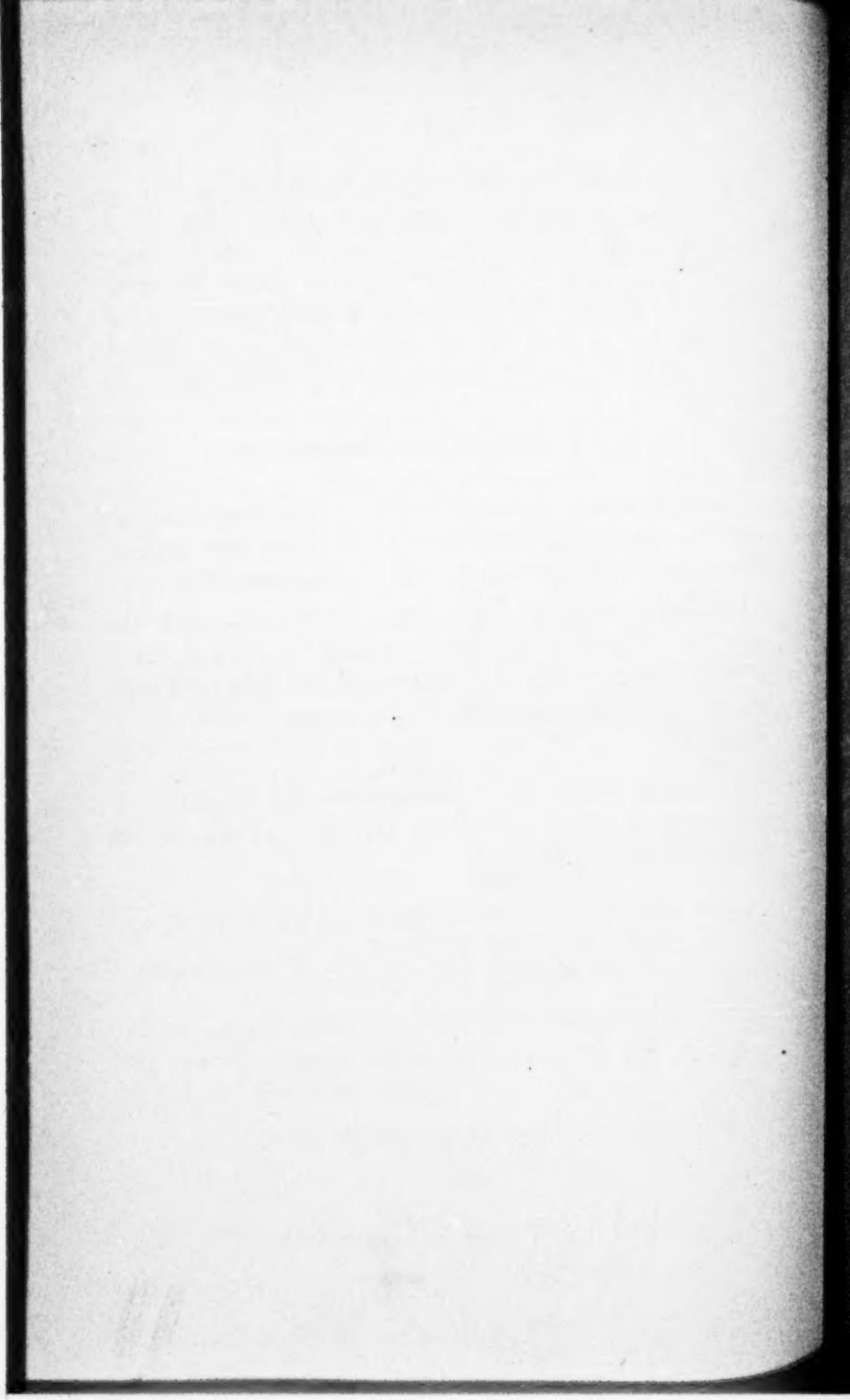
The admission of facts by libellants' proctor was not intended to divest libellants and could not divest them of their legal rights, for, they are the wards of the admiralty.

The authorities cited by counsel are not apposite. A precise precedent is *Babdell v. Gardner Fed. Cases*, 692, where the Court held that when a seaman leaves the ship for the purpose of obtaining legal satisfaction he is not a deserter.

It is respectfully submitted, therefore, that the decree of the Court of Appeals should be reversed and that of the District Court should be affirmed.

W. J. WAGUESPACK,

Of Counsel.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. [REDACTED] 802

**ERIK SANDERS, ET AL.,
(Plaintiffs) Petitioners,**

**JOHN McDONALD, CLAIMANT ON THE
SHIP "TALUS,"
(Defendant.) V.**

**On Writ of Certiorari to the United States Court
of Appeals for the Ninth Circuit.**

Motion for Rehearing.

W. J. WAGGONER, JR.,

Court, 14, 1918.

OCTOBER 14, 1918.

DALE, WAGGONER & CO.

W. J. WAGGONER, JR.

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AUTHORITIES CITED.

B

- Bank v. Owen, 2 Peters, 538 12

C

- Chesapeake & O. R. Co., 179 U. S., 388 10

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 935

ERIK SANDBERG, ET ALS.,

(Libellants) Petitioners,

versus

JOHN McDONALD, CLAIMANT OF THE BRITISH
SHIP "TALUS."

(Defendant) Respondent.

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Fifth Circuit.

Brief on Behalf of Libellants.

STATEMENT OF CASE.

Libellants, who are not American citizens, were shipped as seamen aboard the British ship "Talus" at Liverpool, England, and began their service on December 1, 1916. The "Talus" sailed on December 1, 1916, and arrived in the port of Mobile on February 11, 1917, where she remained until February 24, 1917.

On February 22, 1917, the libellants demanded of the master one-half of the wages which they had then earned. This demand was refused by the master upon the ground that he had the right to deduct certain sums advanced to libellants in Liverpool when they signed the shipping articles, and that, after making said deductions, libellants had received each more than one-half of the wages which they had then earned, although without said deductions there was a balance due to each which amounted to more than one-half of their wages then earned.

Claimant set up this defense:

I.

That the statute provides for payment of one-half of the wages earned after the vessel has entered into the waters of the United States, and not half of the wages earned from the commencement of the voyage.

II.

That the master was entitled to deduct the advance made in Liverpool before the commencement of the voyage in computing what was due.

The District Court decided both points against claimant, entering a decree in favor of libellants for the full amount of wages earned, less certain advances made after the commencement of the voyage.

The Court of Appeals affirmed the District Court on the first point upon the same grounds which the District Court had stated, and in this language:

"We think the plain purpose of Congress was to allow the seaman the benefit of half of his earned wages, less payments, upon each occasion upon which the statute permits him to demand them from the commencement of the voyage to the time of demand, and that the words of the statute, 'then earned,' are not limited by the succeeding words 'at every port,' but that the function of the latter is to describe the place of legal demand only. Absence of punctuation between the words 'then earned' and the words 'at every port' is of little persuasiveness as against the evident intent of Congress. The probable brief duration of a ship's stay in intermediate ports and the small amount of probable wages there earned by the seamen would make the required payments of little value to them."

But the Court of Appeals reversed the District Court upon the second point and allowed the deductions of the advances made in Liverpool, upon the ground that Section 11 of the Seamen's Act, prohibiting such advances under penalty, is only applicable to American seamen and foreign seamen in American ports, and does not apply to advances made to a foreign seaman in a foreign port on a foreign vessel, where the law permits it, because Congress has made the criminal penalty cover all advances prohibited by the section, and had thus indicated its intention to limit the scope of the prohibited advances to such as were made within its jurisdiction to punish crimes, and on the further ground that no policy against the making of advances to foreign seamen in foreign ports on foreign vessels where the law of the country permits it can be deduced from the statute, and that the advances, being *malum prohibitum*, and not *malum in se*,

if valid where made, are valid in the Courts of the United States.

STATEMENT OF ERRORS.

We think the Court erred in the following particulars:

(a) In holding that the statute cannot be construed to apply to advances made by foreign ships to foreign seamen who shipped in a foreign port whenever the ship has entered into the ports of the United States to load and unload cargo, and while in the harbors of the United States, because the imposition of a penalty for making such advances upon foreign soil, which is beyond the legislative power, shows the intent of Congress to exclude such advances, whereas under the rule of construction laid down by this Court in *United States vs. Freeman*, 229 U. S., 117, the imposition of such penalty is within legislative authority.

(b) In that assuming that the penalty clause of the statute is unconstitutional still, the civil provision of the statute can be given effect by separating it from the penalty provision as applicable to advances made by foreign vessels to foreign seamen in foreign ports, because these provisions are not indivisible, but are separable from one another, and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated.

(c) In that assuming that it is necessary, in order to save the statute, to adopt the restricted interpretation placed upon it by the Court of Ap-

peals and that no special policy can be deduced against advances made to seamen in a foreign port still a general policy can be deduced from Section 4530 of the Act against such advances everywhere in that they are calculated to affect injuriously the general interest and policy of the country.

(d) In that, assuming that libellants were not entitled to one-half wages earned, the Court erred in concluding that they were deserters, and in dismissing their demand as deserters.

ARGUMENT.

POINT ONE.

The penalty provision of the statute under the rule of construction in *United States v. Freeman*, 229 U. S., 117, is within the scope of legislative authority.

The intent that Section 11 should apply to foreign vessels when they enter into the ports of the United States to load and unload cargo, and while they remain in the waters of the United States, is manifest, for the statute provides that any master or owner of a foreign vessel who has violated this provision shall be liable for the penalty. Section 11 of the Act of March 4, 1915, page 1168, Vol. 38, Stat. L., reads as follows:

"(a) That it shall be, and is hereby, made unlawful in any case to pay any seaman any wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person,

for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the Court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.00. * * *

"(e) That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any

such vessel unless the provisions of this section have been complied with."

The statute does not say: That any master or owner of a vessel who shall violate this provision shall be liable for the penalty, but who has violated this provision; that is to say, any master or owner of a vessel who, having paid any seaman wages in advance, shall enter into the ports of the United States to load and unload cargo.

It is obvious that Section 11 forms part of the general plan which Congress has mapped out to elevate and better the condition of American seamen, to secure a higher standard of service, and to benefit the American merchant marine by equalizing the costs of operation between our ships and those of other nations, for, as said by this Court in *The Eudora*, "no one can doubt that the best interest of seamen as a class are preserved by such legislation."

The immediate purpose which Congress had in view in adopting this criminal provision was evidently to prohibit the entry into the ports of the United States of vessels with seamen who were victims of crimps, as they are called, and who, having been paid advance wages, stood in a state of continuous involuntary servitude, to the end that discrimination against American seamen, whose standard Congress desired to elevate, and American shipowners, who are bound by the provisions of the law against the payment of advance wages, might be avoided. What Congress wished to do was to raise the standard of service in the American merchant marine, and to that end subject the foreign master and the foreign seamen, as soon as foreign vessels came within the jurisdiction of the United States, to the same laws to which

the American masters and the American seamen were subjected. It is, therefore, evident that the purpose of the clause as to foreign vessels was not to prohibit the act itself of paying advanced wages upon foreign soil, because that was beyond the scope of legislative authority, but to prohibit the entry of vessels into our ports to load and deliver cargo with seamen of a lower standard, affected, tainted, with the continuous condition of involuntary servitude which was established by these payments, and which entered with them into our ports when they came into competition with American seamen.

That was the evil to be remedied; but this Court has said that:

"A guide to the meaning of a statute is found in the evil which it is designed to remedy, as gathered from contemporaneous events."

Trinity Church vs. United States, 143 U. S. 457.

The construction placed upon the statute by the Court of Appeals which eliminates the criminal penalty, which Congress determined was a necessary sanction, would manifestly defeat its enactment, and would open the doors to the evil which it was designed to remedy, for it would exclude entirely the advances made in a foreign country, while the construction which includes the criminal penalty would accomplish the purpose of its enactment; and such a construction is clearly within legislative powers under the rule adopted by this Court in the case of *United States vs. Freeman*, 229 U. S. 117.

In that case, which was an indictment under Section 240 of the Criminal Code, making it a punishable offense knowingly

"to ship or cause to be shipped from one State * * * or from any foreign country into any State * * * any package of or containing intoxicating liquor of any kind, unless such package be so labeled on the outside cover as to plainly show the name of the consignee," etc.,

although the word "ship" was used in the statute, the Court read "shipped" as a continuous act whereby the transportation into a State is accomplished, and said:

"So, if its words permit, as we think they do, the statute must be given a construction which will cause it to reach both classes of shipments and thereby to accomplish the purpose of its enactment. (*United States vs. Chavez*, 228 U. S. 525, 33 S. C. Rep. 599.) This, we think, requires that it be construed as referring to the continuing act before indicated, whereby the transportation into a State is accomplished, whether the package comes from another State or from a foreign country. In this view the completion of the offense will always be within a jurisdiction where the statute can be enforced."

Applying that rule of construction to this case, we think that the clause of the statute which imposes a criminal penalty upon the master of the vessel who has violated its provision by entering the waters of the United States while the relation of debtor and creditor established by the payment of advance wages on foreign soil continues to exist, is within the scope of legislative authority.

SECOND POINT.

The penalty provision of the statute and the civil provision are not indivisible but are separable and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated.

If our contention is not well founded, if the penalty provision is unconstitutional, we think the section can still be saved, because the criminal provision can be omitted and the civil provision enforced, since the civil provision is complete in itself and can be separated from the penalty provision, for the two provisions are not indivisible; and it is obvious from the object which Congress had in view that its intention would not thereby be violated, because manifestly Congress would have enacted the civil provision without the penalty provision, not only because the penalty provision was merely incidental, but because the civil provision was necessary to carry out the general purpose which Congress had in view.

McCullough vs. Commonwealth of Virginia,
172 U. S. 102; *Railroad Co. vs. Schutte*, 103
U. S. 118; *James vs. Bowman*, 190 U. S.
127; *Chesapeake & O. R. Co. vs. Commonwealth of Kentucky*, 179 U. S. 388; *New York vs. Mien*, 11 Pet. 102.

The words of subdivision "e" of Section 11:

"That this section shall apply as well to foreign vessels while in the waters of the United States as to vessels of the United States."

are evidently intended to apply only and solely to the civil provision of subdivision "a" of Section 11, and not to the criminal provision of that subdivision, because, if the intent and purpose had been to make them apply to both the criminal and the civil provisions of the statute, it would not have been necessary to have added:

"And any master, owner, consignee, or agent of any foreign vessel who has violated this provision shall be liable for the same penalty that the master, owner or agent of any vessel of the United States would be for similar violation."

All of this language would be superfluous if the penalty provision had been included in the language:

"That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States."

We think, therefore, that the two provisions are not indivisible, and that this penalty provision can be separated from the civil provision of Sub-section "a" which latter provision is independent and is complete in itself, and that it can be enforced in this case.

It is manifest that if either our contention in point one or our contention in point two is correct, the advances made in Liverpool should have been disallowed under the doctrine enunciated in *Patterson vs. The Eudora*, 190 U. S., 69, and in *The Kensington*, 188 U. S., 263.

POINT THREE.

Assuming that no special policy against the making of advances against foreign seamen in a foreign port can be

deduced from Section 11, still a public policy against making said advances everywhere can be deduced from the fact that it would operate injuriously against the general interest and policy of our own citizens.

If we assume for the sake of argument that it is necessary to adopt the restricted construction placed upon Section 11 by the Court of Appeals, in order to save the statute from constitutional death, then no special policy could be deduced from that section, against the making of advances to foreign seamen in a foreign port, because that would only be *malum prohibitum*. But, a public policy against making said advances everywhere can be deduced from the fact that either it involves moral turpitude or operates injuriously against the general interest and policy of our own citizens. There can be no controversy as to that proposition.

Bank v. Owen, 2 Peters, 527-538; *Wodward v. Roane*, 23 Ark., 523; *Marshall v. Sherman*, 148 N. Y., 9; *Hill v. Spear*, 50 N. H., 253.

The making of such advances may not involve moral turpitude but the discrimination against American seamen and American shipowners which would result by enforcing the law against them and not against foreign shipowners would affect injuriously the interest of American seamen and of the American merchant marine of the United States, for the policy of the United States is to promote the welfare of American seamen by elevating and bettering their condition, by causing wages to equalize upwards by means of the free operation of the law of supply and demand as to labor, to secure a higher standard of service, and thus promote

safety at sea, and to benefit the American merchant marine by equalizing the costs of operation as between our ships and those of other nations; that being the general policy of Congress, it is manifest that if the law against making advances to seamen in American ports were enforced against American shipowners and foreign shipowners and not against foreign shipowners when the advances were made in foreign ports, it would operate injuriously against the interest of the American merchant marine and against the interest of our own American seamen; nor does it make any difference if there is no statute expressly prohibiting such advances and if the making of such advances involves no moral turpitude for the test is whether there is a rule of public policy as was said in *The Kensington*, 188 U. S., 263, where this Court used the following language:

"Nor is the suggestion that because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore, they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States."

POINT FOUR.

If we are wrong on every proposition still the Court erred in concluding that libellants were deserters, and in decreeing their wages forfeited.

Under the conviction that their contract had lawfully terminated, libellants left the ship in good faith for the purpose of asserting their rights in a United States Court. They could not, therefore, be deserters in the sense in which that word is ordinarily used. If they made a mistake still they were justifiable in believing that they could lawfully terminate their contract since the District Court was of the same opinion.

Seamen are the wards of admiralty entitled to special protection, and in view of the fact that this is a new law involving difficult propositions, we think that even if the Court should come to the conclusion that our contentions are not well founded that the balance of libellants' wages, after deducting the advances, should not be forfeited.

CONCLUSION.

It is respectfully submitted that, under the rules of construction in *United States vs. Freeman*, the imposition of a penalty for the making of advances upon foreign soil which is a continuous act when the vessel comes into our port to load or unload cargo is not beyond the legislative power, that the civil and the penalty provisions of Section 11 are divisible and that it is obvious that Congress would have enacted the civil provision with the penalty provision eliminated; that there is a rule of public policy of the United States against making such advances everywhere in that it is calculated to affect injuriously the general interest and policy of the country; that the advances, therefore, in this case

should not have been allowed; but that if we are wrong on every proposition, still libellants were not deserters in the ordinary sense of that term, and, therefore, the balance of their wages should not be decreed forfeited.

Respectfully submitted,

W. J. WAGUESPACK,

Sept. 14, 1918.

Of Counsel,

1406 Whitney-Central Bldg.,

New Orleans, La.,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No.

ERIK SANDBERG, ET ALS., (Libellants), Petitioners

vs.

JOHN McDONALD, Claimant of the British Ship "Talus,"
(Defendant), Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices
of the Supreme Court of the United States:

The petition of Erik Sandberg, Carl Jannson, S. K. Benjaminsen and John Peranen, all citizens of various states and kingdoms foreign to the United States of America, by their proctor respectfully show to this Honorable Court:

That during the months of November and December, 1916, they were employed as seamen by agents of the British full-rigged ship, the "Talus", at the port of Liverpool, England, and that at the time of such employment and before boarding the ship or performing any service for it, they were all made certain advances by the ship. The ship sailed to the Barbadoes

and thence to Mobile, Alabama, where she arrived Feb. 13, 1916, and loaded a cargo of timber.

Petitioners received not only such advances but during the voyage, at Barbados and on arrival at Mobile, certain moneys on account and certain supplies out of the slop-chest. That on Feb. 22, 1916, which was a little more than a week after the ship's arrival at Mobile, all of the petitioners made a demand on the master of the "Talus" that he pay them the one-half of their wages allowed them by the "Seamen's" Act. The master replied that he would pay them half of their wages, but that in arriving at the sum he would deduct the aforesaid advance and refused to pay petitioners half of their wages without so deducting or crediting the advances made to them at Liverpool.

Petitioners demanded that the master pay them half of their wages without deducting such advances and upon his refusal to do so they filed in the District Court of the United States for the Southern District of Alabama on Feb. 23, 1917, their libel asking that under the "Seamen's" Act they be allowed to recover the full payment of their wages and be held to have been released from their contract by the master's failure to comply with said demand. (Record, pp. 4, 5, 6, 7).

On April 5, 1917, the Claimant filed an answer in which it was admitted that petitioners had been employed as seamen as hereinabove set forth and that they had performed service as such and had made demand upon the master for half their wages, but that the "Talus" was a British ship, that petitioners were foreigners, had been employed at Liverpool and that all of the services performed by them up to the time of the arrival of the ship inside the Mobile Bar had been performed outside the territorial waters of the United States of America, that the contract had been made and the advances paid at Liverpool, that such advances were lawful and customary under the laws of the Kingdom of Great Britain and Ireland and denied that the master had refused to pay the petitioners the half of their wages as allowed by the American statute, but averred that such deduction of the advance was right and proper and that after crediting the advances made to the seamen, they were entitled to no further payments at the time of their demand, but had

received the amount to which they were entitled under the proper construction of the "Seamen's" Act. (Record, pp. 8, 9, 10, 11).

There was no dispute as to the facts in the case, insofar as the claim of petitioners was concerned, and the cause was submitted on briefs as to the proper construction of the law. The District Court rendered a very full and carefully considered opinion in which it was held that the "Seamen's" Act, especially sections 4 and 11 thereof, when properly construed, did not permit the master of a foreign vessel to make such deduction of the advances paid to the seaman in a foreign port when the seaman demanded a half payment of his wages under the provisions of the "Seamen's" Act upon the arrival of the vessel in an American port, but that the seaman was entitled to receive the full half of wages earned on the voyage without regard to such advance. (Record, pp. 12-24).

The "Seamen's" Act, approved March 4, 1915, is found in 38 Statutes at Large pp. 1164-1185, and the two sections involved in this cause are fully set out in the opinion of the learned district judge (Record, pp. 13,14).

A final decree was entered May 26, 1917, in and by which petitioners were allowed to recover their wages in full and were discharged from the ship. (Record, pp. 24, 25).

By its decree the District Court thus gave full force and effect to the following provisions of section 11 of said Act: "That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages..... The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of the wages after the same shall have been actually earned, and shall be no defence to a libel suit or action for the recovery of such wages". It did so for the reason, that the same section provides: "That this section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States". Section 4 of the act provides that the seamen on foreign vessels, while in American harbors, shall have the same right to

the payment of half the wages earned by them as seamen on American vessels, and the learned district judge held that these sections taken together laid down a rule which the Congress had directed the courts to follow.

An appeal was taken from this decree to the court of appeals for the fifth circuit and on such appeal the facts were stipulated in the record. (Record, pp. 25, 26, 27). The case was argued orally on January 16, 1918, before Walker and Batts, Circuit Judges, and Grubbs, District Judge, and on Jan. 25, 1918, the court handed down its opinion, whereby the decree of the district court was reversed, and the cause remanded, with directions to that court to enter a decree dismissing the libel and taxing the appellees with the cost of the appeal.

There was only one question to be decided in the case and that was whether the advance was a proper credit against the half wages to which the seamen were entitled, and the learned Circuit Court of Appeals, in its opinion, held that the amount of this advance, if it had been made beyond the territorial jurisdiction of the United States was a proper credit, just like any other payment on account. In arriving at this conclusion the learned court said that it was influenced so to decide because the Congress had provided in section 11 for the punishment of the master of a foreign vessel who violated the provisions of the act prohibiting the payment of advances. The court of appeals said there was grave doubt if the Congress had such a power, and that it was the duty of the court not to so construe the act unless forced to do so. The learned court in its very able and clear opinion then proceeded to fix the same limitation upon the civil provisions of the act, quoted above, and held that in saying that the payment of the advance should be no defense to a libel and should in no case absolve the vessel, Congress only intended this provision of the act to apply to advances made within the territorial jurisdiction of this country.

Petitioners feel aggrieved and believe that the decree of the United States Circuit Court of Appeals for the Fifth Circuit is erroneous, because they believe that such construction of the act will defeat the purpose of the "Seamen's" Act not only as it was intended to furnish a remedy to them, but will

similarly defeat the claims for half wages allowed by the act of all foreign seamen for the reason that the United States is the only maritime nation that has adopted the policy of prohibiting the advance and the payment of the advance is a generally established custom. Because such construction of the act will thus adversely affect the interests of thousands of seamen in the foreign merchant marine and will inevitably affect American merchant seamen as well, and by impairing the right of personal liberty extended by the act will tend to defeat another great purpose of the act, which was to enable the American merchant marine to compete with foreign vessels as far as the wage scale is concerned, and because further, there is inherent in this case a great principle of law, vital to the interests of the United States, namely, the limitations to the power of the Congress in dealing with the general relations of this country with other nations, and because further, there is a conflict in the decisions of the district courts, and the Circuit Court of Appeals of the Second Circuit has decided a very similar case by a divided court, petitioners believe that this court should require said case to be certified to it for its review and determination, in conformity with the provisions of the Acts of Congress in such cases made and provided.

WHEREFORE, Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding the said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled John McDonald, Claimant of the British Ship "Talus," vs. Erik Sandberg et als, No. 3119, to the end that the said case may be reviewed by this court and that such proceedings may be had therein as to this honorable court may seem just.

ERIK SANDBERG
CARL JANNSON
S. K. BENJAMINSEN
JOHN PERANEN

ALEX. T. HOWARD,
Proctor for Petitioners.

STATE OF ALABAMA,)
COUNTY OF MOBILE.)

Alex. T. Howard, being duly sworn, deposes and says that he is the Proctor for the petitioners named in the foregoing petition, has prepared the same and knows the contents thereof; and that the allegations thereof are true, as he verily believes.

ALEX. T. HOWARD

Subscribed and sworn to before me this 8th day of March 1918.

STELLA BLACK,

(Seal) Notary Public, Mobile County, Ala.

I hereby certify that I have examined the foregoing petition, and in my opinion, the petition is well founded, and that the case is one in which the prayer of the petitioners should be granted by this court.

ALEX. T. HOWARD,

Proctor for Petitioners.

MOTION FOR CERTIORARI.

SUPREME COURT OF THE UNITED STATES.

In the matter of the petition of Erik Sandberg, et als., for a writ of Certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit, to bring before the Supreme Court the case entitled in that court.

John McDonald, Claimant of the British Ship "Talus,"
Appellant

vs.

Erik Sandberg, et als., Appellees

And now come the Petitioners, by Alex. T. Howard, their Proctor, and move this court, upon a certified copy of the Transcript of the record herein, and upon the annexed petition, sworn to the 8th day of March, 1918, for a writ of certiorari, directed to the United States Circuit Court of Appeals for the Fifth Circuit, to bring before this honorable court the

case of John McDonald, claimant of the British Ship "Talus," Appellant, against Erik Sandberg et als, Appellees, for such proceedings therein as to this court may seem just.

ALEX. T. HOWARD,
Proctor for the Petitioners.

NOTICE OF MOTION.

SUPREME COURT OF THE UNITED STATES.

Erik Sandberg et als, Petitioners

vs.

John McDonald, Claimant of the British Ship "Talus,"
Respondent.

Messrs. Joseph N. McAleer, James H. Kirkpatrick, Palmer Pillans and M. V. Hanaw, Proctors for Respondent.

Please take notice that, on the petition of Erik Sandberg, Carl Jansson, S. K. Benjamin and John Peranen, verified March 8th, 1918, and a copy of the entire record in the case, the foregoing motion and petition will be submitted to the Supreme Court of the United States at Washington, D. C., on the 25th day of March, 1918, at the opening of the court on that day, or as soon thereafter as counsel can be heard; and that in support of said motion and petition, a brief of which the annexed is a copy, will be submitted to the court.

Dated March 8th, 1918.

ALEX. T. HOWARD,
Proctor for Petitioners.

I hereby accept service of a copy of the foregoing motion and petition, together with a copy of the brief annexed thereto, this 8th day of March, 1918.

PALMER PILLANS,
Of Counsel for the Respondent.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1917.

ERIK SANDBERG, et als, (Libellants)
Petitioners.

Against

JOHN McDONALD, Claimant of the
British Ship "Talus," (Defendant)
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.

The facts and the general basis of this application are stated in the foregoing petition, and this brief will be confined to the argument of the points of law involved.

POINT 1.

The Petition seeks to obtain a construction by this court of Section 11, in connection with Section 4 of the Act of Congress approved March 4th, 1915 (38 Statutes at Large, 1164-1185), entitled "AN ACT TO PROMOTE THE WELFARE OF AMERICAN SEAMEN IN THE MERCHANT MARINE OF THE UNITED STATES; TO ABOLISH ARREST AND IMPRISONMENT AS A PENALTY FOR DESERTION AND TO SECURE THE ABROGATION OF TREATY PROVISIONS IN RELATION THERETO; AND TO PROMOTE SAFETY AT SEA." Section 4 provides for the payment to the seamen of one-half of the wages earned at every port where the vessel shall load or discharge cargo and Section 10 prohibits the payment of wages in advance and declares that the payment of advances shall in no case absolve the vessel or be a defense to a libel for the payment of the same and makes such payment a misdemeanor, provides that the section shall apply to seamen on foreign vessels while in harbors of the United States and subjects the masters of foreign vessels to the same penalties as our own. There is only one question presented by the record which is to be determined by a construction of the act, and that

is, whether, when the seaman demands one-half of his wages in an American port, the master can deduct advances made to the seaman in a foreign jurisdiction before he performed any services to the vessel. In other words, did the Congress intend what it said about such advances, namely, "The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages," or whether on the other hand, the court should read into or construe into the act the limitation that such advance should be excluded only when it had been made within the territorial jurisdiction of the United States.

Unless there be some good reason for thus adding to the act or to put it differently, reading this limitation into the act, then, the act speaks clearly for itself, needs no interpretation or construction, and the master cannot deduct such advance in arriving at the half wages for the simple reason that the act itself, as plainly as words can make it, specifically says that the payment of the advance shall in no case absolv^e the vessel and shall be no defense to a libel for the recovery of the full wages. In seeking to discover whether such limitation ought to be so read into the law, one would naturally endeavor to ascertain whether any rule of natural justice would require or lead to such conclusion and would turn first to the language used and see whether if we gave to the language its primary meaning and considered it in connection with the well understood principles of international law, the power to pass such legislation was within the power of the Congress.

If it had no such power, then, there might be suggested the propriety of fixing the limitation to advances paid within the jurisdiction, in order that one might escape ascribing to the Congress the usurpation of a power which it didn't have, or what is equivalent thereto, the doing of a vain and foolish thing.

The law would seem so clearly and completely settled on this point as to call for but little discussion. It was settled by

this court in the early days of the republic. We find the principles applied to-day not only in those provisions of the Seamen's Act regulating the affairs of foreign merchant ships and seamen, but in the Tariff Act, the Immigration Act, the Chinese Exclusion Act, the Naturalization laws and in many other ways. The authorities on International Law and the decisions of this court announce clearly the doctrine of the absolute supremacy of every nation to fix for itself the conditions under which it will carry on commerce with other nations, or admit the peoples of other nations within its borders; that if it will it may exclude other peoples and the merchant ships of other nations altogether and therefore must inevitably be held to have the right and the power to fix the terms and conditions upon which such ships can come into our ports and that when the foreign merchant ship comes here she submits herself to the regulation and jurisdiction of our laws. It is clear from the opinion of the learned Circuit Court of Appeals in this case, that the court entertained no doubt of this proposition.

Patterson v. Bark "Eudora," 190 U. S. 169.

Wildenhus's Case, 120 U. S. 1.

Vattel's Laws of Nations, Fifth Am. Ed. (Chitty)
page 39; also at page 145.

That the Congress therefore was dealing with a subject over which it had absolute control admits of no doubt and it is earnestly urged that, far from finding within the principles of International Law any reason for such limitation, we find there every reason for giving to the terms of the Act the full and complete meaning which its clear and emphatic terms so unmistakably convey, and it is suggested here that if the court find that the Congress had the power and that the language of the Act is clear that it will not concern itself with the question of policy, which, of course, is for the Congress alone.

SECOND POINT.

If then, there exists no reason for such limitation, and if the language of the law is so clear and explicit that the court should not feel called upon to construe it, under the well un-

derstood principle of construction that the court will not attempt to interpret that which needs no interpretation, let us next see if there existed anything in the conditions at the time of the passage of the act, or in its purposes which might tend to suggest that the Congress intended that such limitation be given to the terms of the act as has been declared by the learned Circuit Court of Appeals in this case. Precisely the contrary is true!

This "Seamen's" Act is no ordinary act of the Congress! It is not only an extensive legislation, but was strenuously fought and debated in the Congress. For twenty years it had been pending and during these twenty years not only had the American seaman and the American merchant marine gradually disappeared from the ocean but the public had been shocked by many great disasters of the sea, such as the "Titanic." The law has overturned the policy of ages with reference to the sea and has attempted to make the seaman a free man. It was earnestly urged upon the Congress that the reason the American boy would not follow the sea was because of the low wages created by competition with the poorly paid laborers of Europe, but principally the Orient, and for the further and greater reason that, unlike other men who must toil, he must give up his liberty and be subjected to arrest and imprisonment for desertion. It had come to be more and more realized that the seaman not only followed a hard and dangerous life, but was in many cases taken advantage of. The high value of his service to navigation and commerce, together with the courts' knowledge of his habits and of the advantages that were taken of him by the unscrupulous caused him to become known as the ward of the courts of admiralty, but this did not suffice. The pages of the Federal Reporter and the decisions of this honorable court are full of stories of how, under the cloak of the advance, had hidden the assassins of his character and his wages. Societies sprang up in the name of humanity to protect him. Years pass and at last through the long night there flashes for the seaman the light of the "Seaman's" Act!

The appeal to pass it came not only from American seamen, but British seamen as well. It not only prohibited the

advance, but it abolished arrest and imprisonment and directed the President to notify those foreign governments with whom we had treaties conflicting with the act, that such treaties were to be abrogated. Its broad remedial measures were extended to foreign seamen as well as our own and the foreign merchant vessel was brought within its terms. It was called to the attention of the Congress that America could have no sea-power without seamen and the "Seamen's" Act was so framed as to meet foreign competition. Of what use to attempt to bring back to the ocean a merchant marine already disappeared if the American seaman could not be protected in his wages? How could the American Merchant vessel pay such high wages as prevailed in this country of high wages, and successfully compete with the low wages prevailing in Europe and especially the Orient? It was perfectly apparent to the Congress that right here was the very beginning of things if it was intended to build up our ocean traffic. Of what use were it to give to the foreign seamen freedom from arrest for desertion, if when he deserted he must forfeit the entire wages of a long ocean voyage? There was only one answer. The law must be so framed that the foreign seamen should, not only be free morally and as well as our own seamen protected from arrest for desertion, and the general social conditions of the seamen thereby improved, but he must be made free economically as well. That is to say that the law must be so framed that when the vessel arrived in an American port the foreign seamen getting a low wage could quit his ship and obtain employment in an American port where the American rate of higher wages prevailed. The inevitable tendency of such encouragement to him, brought about by thus allowing him payment of half of his wages, was to equalize the wage scale as far as this country is concerned and allow our merchant vessels to compete with the other nations of the world. Thus only could the two fundamental purposes of the act be realized, which were to promote the welfare of seamen and to build up our merchant marine.

It is, therefore, earnestly submitted that it not only appears from the language of the act that it was intended to be enforced in the way the learned district judge enforced it, but

that such was the clear purpose, the broad remedy intended by the act. Now, can such purpose be realized if the opinion of the Honorable Circuit Court of Appeals states the proper construction? Could not the foreign vessel easily defeat the provisions and purposes of the act in this very important respect by simply arranging the advance as to the amount so that when the vessel arrived in an American port it would be sufficient under the decision in this case to offset the demand for half the wages then earned? It is after all on the part of our foreign competitors, not so much a "tempest in a tea-pot," insofar as the payment of the half wages is concerned, (which after all, while a great blessing to the seaman is a trifle to them), but concern over the question of preserving the low wages at which they are able to obtain seamen abroad and would I be putting it too strongly to say that the real effort is to try to nullify the provision about the abrogation of the arrest for desertion and with the ulterior hope that to the extent that they are able to evade this provision of the "Seamen's" Act they will be able to maintain the low European scale of wages against their American competitors? It is unthinkable that such being the purpose of the act as shown by the conditions at the time of its passage and by the debate in the Congress that the courts should so construe the plain language of this act as to enable the foreign owners to evade it in this way. In thus endeavoring to urge upon the court the economic purposes of the act in order to show that the whole act should be construed together and its plain and clear terms upheld in all of their provisions to the end that the welfare of the American seaman may be promoted and our Merchant Marine be built up and American sea-power thus made possible in all of its noble possibilities, it is not our desire to overlook what after all, seems to me, to be the loftiest object of the law—and that is that the seaman as a human being, the foreign seaman as well as our own, shall receive the full measure of the personal liberty which, it was the purpose of the Congress, he should receive and that he might thereby attain unto that character and standing, which is today the opportunity of all other classes of labor and it is submitted also that it is only in this way, and by the consequent lifting of the dignity of the occupation of the

seaman that the free people of this great land can be induced to follow the sea—and also that there might be accomplished through better seamen that other great and expressed intent of the act, the promotion of safety at sea. The grand objects of the act will not be realized unless Section 4 of the act is upheld by the courts, in connection with Section 11, and the seaman thus enabled to receive the one-half of his wages intended to be allowed him, otherwise the greatest benefit of the entire act—the securing of freedom from arrest for desertion will, in practical effect, be obtained only at a great and hard sacrifice by the seaman, viz., the **forfeiture of all of his wages**. The idea of the Congress, must unquestionably have been, not only to rid the life of the seaman of the bane of the advance with all of its attendant evils, which this court has denounced and which The Legal Aid Society (of which a former member of this honorable court is the President) and many other benevolent associations have for so long attempted to abolish, but to give him the right to leave the vessel at an American port without having to surrender but half of his wages. If the construction put upon the act by the Circuit Court of Appeals shall prevail in this honorable court, then, it is submitted, that as it is the general practice among foreign owners to pay the seamen wages in advance anyhow, they will have at hand an easy method not only of defeating the provisions of the American statute requiring them to pay the seaman half of his wages but by conspiring with crimps, shipping masters, boarding house keepers, shop-keepers and other creditors of the seaman, who get most of the seaman's money anyhow under the advance system, will be able in large measure to defeat the provision about freedom from arrest for desertion by using as a club his helplessness and his natural desire not to lose the reward of his toil. This provision of the act doing away with the arrest is after all the "thorn in the flesh" of the foreign ship-owner. This is manifested by the heavy sentences which they are even now inflicting upon their seamen who desert, once they get them back within their jurisdiction. Their resentment at the extension by this great country of its beneficent system of laws to them is also exhibited by the recent attempt to get the Congress to repeal this provision of the act,

but, to their shame, it is most deplorably shown by their action sometimes in this country, now that they are deprived of the assistance of the federal government, of appealing to the unscrupulous officers of municipal and state governments to harass the seaman by prosecutions on charges real and imaginary in the state courts, when he has left the ship, the main idea always being, of course, to show him the error of his way in seeking to obtain for himself the great relief extended to him by an act of the Congress and leaving the vessel. The seaman is naturally not adept at taking care of himself, especially where he is unacquainted with the people, the language or the laws of the port, another circumstance which has caused him to be considered as the ward of this honorable court. And there is certainly nothing morally wrong, or unjust to any other nation, for the American Congress to strike down the evils of the advance, to provide for the payment to the seaman of half of his wages while in our ports, or to make all seamen free men insofar as it lies within its legal powers to do so throughout the world. Of course its action cannot stretch beyond the regulation of such foreign commerce as it is related to this country, but no good reason appears why it should not go thus far.

The debate upon the "Seamen's" Bill in the Senate shows that there was strong opposition to those provisions and sections of the act which sought to control or regulate foreign shipping, some senators going so far as to declare the right to do so beyond the powers of Congress, but the learned Senator from Mississippi (Mr. Williams) in an able address clearly demonstrated by reading portions of the opinion of this honorable court in Wildenhus's Case, 120 U. S. 1-19, that precisely the reverse was true and the right to pass the act was clearly within the powers of Congress. It is also interesting to note that it was called to the attention of the Senate during the debate and proceedings that the British Government exercised the right to regulate the life-boat equipment not only of her own vessels but foreign as well, not only those sailing from British ports but sailing from foreign ports to the British Isles.

I take it that under this point, it is not necessary to cite any authorities to the effect that in construing an act the

court will look to the conditions existing at the time and to the evident purposes had in mind by the Congress, but in support of the facts stated under this point reference is made to the very able pamphlet recently issued by Mr. Andrew Furuseth, entitled "American Sea-Power and the Seamen's Act," to Mahan's "Sea-Power in History;" and especially, in order to show that insofar as it is permitted to operate it is effectuating the purpose of Congress in equalizing the wage cost in the foreign and domestic vessels, reference is made to the Forty-First Annual Report of the Legal Aid Society, from which the following quotation is taken:

"The effect of the Seamen's Bill as enforced, particularly as to the provisions relating to advance notes or advance wages, and the right of the seamen to collect half their wages in American ports, as applicable to American and foreign vessels, is by far the greatest and most important of anything that has transpired in the shipping world for a long time. The Legal Aid Society took action in favor of abolishing the advance note or of making a law abolishing the payment of wages in advance of the time earned; this action was taken when the bill was pending before the committee on Merchant Marine and Fisheries in Congress. Our activities were in line with the provision of the Seamen's Bill, abolishing involuntary servitude and removing the remedies given to foreign governments and foreign ship-owners, to arrest seamen who desert in ports of the United States. Seamen being given a right on American and foreign vessels alike, to demand one-half wages, or half the wages earned by them and unpaid, in American ports, have been able to enforce that right by the provision of the law which enables them to bring suit for the full amount of wages owing them, in case the Master refuses to pay them half. I am inclined to think the theory and actual operation of the

Seamen's Bill is bound in time to prove its soundness and efficiency * * *. One need not be a mathematician or a student of economy to conclude that the enforcement of this legislation means the creation of an opportunity to build up a Merchant Marine by reason of the fact that higher wages are paid on board all vessels and rules for safety appliances, better food, larger crews' quarters, and general conditions on board, are enforced on American vessels. An interest in shipping is stimulated which has certainly never before existed. Government records show that some 1,162 American vessels have been built and launched in the United States during the past year."

THIRD POINT.

Since then, the principles of international law do not require the fastening of any such limitation to the act, and since the mischief to be remedied by the legislation would call for a construction precisely to the contrary, the petitioners earnestly ask why the act has been so limited in its application by the learned court from which it is hereby sought to bring the case for review. This brings us to the only other possible reason for fixing such limitation, as far as the record reveals and that is the reason given by the learned Circuit Court of Appeals which delivered the opinion below.

The reason is that the section contains a provision making the payment of such advance wages punishable as a misdemeanor and the learned court well says that there is grave doubt that the Congress could lawfully subject the master of a foreign vessel to a penalty for an act lawfully done without the territorial jurisdiction of this country, that the Congress therefore should be deemed by the courts to have entertained no such intent. Thus far the argument is so ingenious, so plausible and so sound that our minds immediately give free assent. But it is earnestly asked why the learned judge in interpreting the act hits upon an unexpressed intent of the

Congress, and one which arises only out of a regard for an established principle of international law and then imposes such a limitation upon another disconnected and independent section of the act, which deals only with the law from the civil standpoint as distinguished from the criminal, in connection with which there can arise no such suggestion that it was beyond the powers of the Congress. It is respectfully submitted that in so constructing the act, the learned court has not only defeated its purposes, but has made an interpretation of it which is supported by no recognized legal rule of interpretation of statutes. The authorities are precisely to the contrary. It is not a proper rule of interpretation to limit the natural meaning of the act by imposing upon a section thereof a limitation which inheres in another section.

"It is a general rule without exception, in construing statutes, that effect must be given to all their provisions, if such a construction is consistent with the general purpose of the act, and the provisions are not necessarily conflicting; and all acts of the legislature should be construed, if practicable, that one section will not defeat or destroy another, but explain and support it."

Mr. Justice Field in *Bernier v. Bernier*
147 U. S. 246.

"We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant.' This rule has been repeated innumerable times."

Mr. Justice Strong in *Washington Market Co. v. Hoffman*, 101 U. S. 115.

It is respectfully urged that by its decree in this cause the Circuit Court of Appeals has failed to give to the following provision of the act that full force and effect which its clear and emphatic language, which the purpose of the act and the rule of interpretation above set forth by this honorable court require, to-wit:

"The payment of such advance wages or allotment shall in no case except as hereinafter provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages."

A reasonable construction of this language surely does not require the fixing of such a limitation upon it and there is no necessary relation or connection between this, which might be termed the civil provision of the act and the criminal provision so ably discussed by the learned court. On the contrary it will be noted that several paragraphs of the act intervene between the paragraph which contains the above provision and the following provision:

"That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

It will be noted that in the first paragraph of the section there is included not only the provision above quoted, to the effect that the payment of such advance shall be no defense to a libel, but in the same paragraph the payment of advance wages is prohibited and the payment thereof made a misde-

meanor. Now, why this repetition of the provision making the foreign master liable to the same penalties, as the American master, if the theory of the Court of Appeals is correct and the Congress had for the time being overlooked or forgotten the legal distinction between its powers to punish a crime and to make effective civil provisions of the statute? It would seem if such were the case, that after making the payment of advances a misdemeanor, the Congress might well have rested after it had inserted the following words, "That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States." The additional provision to the effect that the master of the foreign vessel is punishable for a violation of the provisions of the act would tend to support the opposite theory, that is to say, would show that the Congress did have in mind the distinction between its power to punish as a crime and its power to regulate. One thing is certain and that is that while the debate was pending in the Senate the decisions of this court in the Wildenhus's case and in Patterson vs. Bark Eudora were argued and commented upon and from them it was shown to the legislative body that the Congress did have the power to regulate such foreign affairs on the civil side of the court.

It is also very persuasive that in the very title of the act it appears that the Congress was dealing with the rights of foreign seamen, and that not only in the body of the act are several of its provisions made specifically applicable to foreign vessels, but that conflicting treaties are repealed by it. Not only so, but an examination of Section 4 shows the specific intent of the Congress to regulate or interfere with the provisions of the contract made abroad. I refer to the following, "and all stipulations in the contract to the contrary shall be void." It is common knowledge that under the shipping articles of foreign vessels the wages of foreign seamen are not made payable in this country. The Congress was aware of this and so it stipulated that the payment of the half wages must be allowed regardless of the provisions of the foreign contract. It will hardly be disputed that it had such power. Now, why should not the Congress have also meant what it

said about the payment of the advance being no defense to a libel? For many years the advance had been prohibited in this country. It was not necessary to insert into the act the emphatic provisions about advance payments and to make such provisions applicable to foreign vessels, unless such was the real purpose of the law. It cannot be successfully contended that it was the purpose of the Congress to give any advantages to the foreign ship which was already carrying ninety per cent of our American commerce. It must have been intended to at least put the American Merchant Marine upon an equal basis of competition insofar as this was within the power of the Congress. It is therefore respectfully submitted that there is no such necessary connection between the two sections that a limitation inherent in the one should be inferred to exist in the other, and that such limitation is not necessary in order to obtain a uniform construction of the act. In support of this conclusion reference is also made to the admirable opinion of the learned district judge in this cause.

FOURTH POINT.

In seeking to obtain a review by this honorable court of the decree of the Circuit Court of Appeals, I am not unmindful of the fact that the sum of money involved is small and that it is the cause of persons not citizens of our great country but in making the effort to obtain a construction by this court of the construction of the act involved I am influenced by the belief that the uniform construction of the "Seamen's" Act is highly essential to the welfare of the American Merchant Marine and to thousands of an humble, but brave and useful class of the world's citizenship. The decisions at present are in conflict. The interpretation which I have here contended for has been the interpretation placed upon the act by district courts both upon the Atlantic and the Pacific sea-board. It was established by the district court also in the instant case.

The *Ixion*, 237 Fed. 142.

The *Imberhorn*, 240 Fed. 830.

The *Delagona*, 244 Fed. 835.

The *Rhine*, The *Windrush*, 244 Fed. 833.

The last two cases were tried together and since this brief has been written have been decided by a divided court. I cannot cite this case as it has not yet been reported. It is hoped that this honorable court will see fit to lay down a uniform rule and rid the act of the present conflict of opinion. The only case cited by the Circuit Court of Appeals in support of the decree entered in this case is The State of Maine, 22 Fed. 734, and it is interesting to note that this case was cited in this honorable court on brief in the case of Patterson vs. Bark Endora (*supra*) and that though decided in 1884 had never been followed until in the case at bar. It is submitted also that the State of Maine case was dealing with the act of June 26, 1884, which was amended several times, and finally by the present act and that the conclusions of the learned judge in that case should have but little weight in arriving at a true construction of an act so highly REMEDIAL as the "Seamen's" Act, which was intended to meet entirely new and changed conditions and which has so completely overturned the policies of the past in nearly every way. It is also submitted that that decision rested upon views of international public law which are completely out of harmony with the decisions of this honorable court.

Respectfully submitted,

ALEX. T. HOWARD,
Proctor for Petitioners.

March 8, 1918.

Supreme Court of the United States

OCTOBER TERM, 1917.

NO. 935.

ERIK SANDBERG, CARL JANNSON, S. K. BENJAMINSEN AND JOHN PERANEN,
Petitioners.

VS.

JOHN McDONALD, CLAIMANT OF THE BRITISH
SHIP "TALUS,"

ON WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF FOR THE PETITIONERS.

ON WRIT OF ERROR TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

STATEMENT OF THE CASE.

The Petitioners are foreigners and entered their suit in the District Court of the United States for the Southern District of Alabama, for seamen's wages earned aboard of said vessel. They sailed from Liver-

pool on the full-rigged ship "Talus," which was a British vessel, and after the arrival of the vessel at Mobile, made a demand upon the master for the one-half of the wages which they had then earned, in accordance with the provisions of Section 4, taken in connection with Section 11 of the "Seamen's Act," which is the Act of March 4, 1915 (38 Stat. at Large 1164). These two sections are set out in full on pages 11 and 12 of the Record. A dispute arose between the master and the seamen as to the proper method of figuring the one-half of the wages which they had then earned.

The master had already paid to the seamen by way of advance wages a sum, which added to the amount which they had received on account, exceeded one-half of the wages then earned. The master contended that the advance was a proper credit, for that the payment of seamen's wages in advance, was lawful and customary in British ports, and that Section 11 of the Seamen's Act, prohibiting the payment of wages in advance did not control the matter, because the seamen were not shipped within the jurisdiction of the United States. The seamen contended on the other hand that the correct method of arriving at the one-half wages to which they were entitled under Section 4 of the Seamen's Act was to disregard the advance paid at Liverpool and in doing so, relied upon the following provision of Section 11 of said Act: "**THE PAYMENT OF SUCH ADVANCE WAGES OR ALLOTMENT SHALL IN NO CASE EXCEPT AS HEREIN PROVIDED ABSOLVE THE MASTER OR THE OWNER THEREOF FROM THE FULL PAYMENT OF THE WAGES AFTER THE SAME SHALL HAVE BEEN ACTUALLY EARNED, AND SHALL BE NO DEFENSE TO A LIBEL SUIT OR ACTION FOR THE RECOVERY OF SUCH WAGES.**" The District Court upheld the contention of the seamen and gave full force and effect to the ordinary meaning of the language of the act, but the Circuit Court of Appeals reversed the decree of the District Court in favor of the seamen

and held that it was not the intention of the act to control the payment of advance wages in foreign ports, by foreign ships, to foreign seamen and in its opinion said that the act both prohibited the payment of the advance by declaring that the payment of the same should be no defense to a suit for the recovery of the full wages, and by fixing a criminal penalty and that because the latter could not be enforced, it was the more reasonable construction of the language of the Act to hold that it was the intention of Congress that both provisions should be enforced alike, that is, should apply only to the payment of such an advance within the territorial jurisdiction of the United States. The whole question, therefore, presented to this court is which of the above constructions is correct.

ASSIGNMENT OF ERRORS.

The only error, of course, assigned to the decree of the Circuit Court of Appeals in this cause, is that it failed in its decree to give full force and effect to the above provision of Section 11 of the Act and held that the Act did not prohibit the payment of the advance in this case and that the same was a proper credit in figuring the amount of half wages to which the seamen were entitled to demand.

BRIEF OF THE ARGUMENT.

In attempting to arrive at a true construction of the Seamen's Act, as far as these two sections are concerned, I have attempted to compare the Act of March 4, 1915, with former acts of Congress, but this has not furnished to my mind a satisfactory solution of the difficulty. I have also read the adjudicated cases but cannot say that I find there a conclusive reason for the construction given. A list of cases involving a construction of the Seamen's Act and the acts which it has amended, follows:

The Maine, 22 F. 734.

The Kester, 110, F. 422.

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- The Troop, 117 F. 557—affirmed by C. C. A.
in Kenney vs. Blake, 125 F. 672.
The Alnwick, 132 F. 117.
The Neck, 138 F. 144.
The Ester, 190 F. 216.
The Jacob N. Haskell, 235 F. 914.
The Ixion, 237 F. 142.
In re Iverson, 237 F. 500.
The London, 238 F. 645.
The Strathearn, 239 F. 583.
The Imberhorne, 240 F. 830.
The Rhine and The Windrush, 244 F. 833.
The Delagoa, 244 F. 835.
Patterson vs. Bark Eudora, 190 U. S. 169.

I have found, however, a solution of the difficulty, which is satisfactory to my own mind at least, and which has persuaded me that the conclusions reached by the learned District Judge are correct and I now submit to this honorable court that the true construction is to be found in a serious consideration of the history of the sea, of merchant seamen, and maritime commerce, of the conditions which existed at the time of the passage of the Act, in the evils which it sought to remedy, and in the way in which the Act was understood and intended to be applied by the Congress itself, as shown by the debate, the findings of the Committees of Congress, the contentions raised by the respective interests that championed and opposed it before the Committees that had it in charge.

FIRST POINT.

IT WAS THE BROAD PURPOSE OF CONGRESS TO GRANT TO THE SEAMAN PERSONAL LIBERTY AND TO PROHIBIT AS TO ALL VESSELS THAT CAME WITHIN OUR JURISDICTION THE EVIL OF PAYING THE SEAMAN HIS WAGES IN ADVANCE AND TO THEREBY PROMOTE THE WELFARE OF THE AMERICAN MERCHANT MA-

RINE AND THE AMERICAN SEAMEN BY AN EQUALIZATION OF WAGES.

At first blush, it would seem strange that either the seamen or the ship owners should regard this question as one of the importance that has been attached to it. Indeed, from what appears upon the surface it might not be deemed important, for it certainly does not matter to the ship-owner at what time or at what place the seaman finally pays back to the ship the trifling sum of money that was advanced to him, and, on the other hand, it should not be deemed a matter of vital importance to the seaman, just when he paid back this money to the ship, and this would probably be true even though we multiplied this instance by the thousands of other cases when it would occur. I would not gainsay that it is well for the seaman, both materially and otherwise, to be made independent, by having a portion of his wages paid to him at different ports where the vessel touches upon a long voyage,——but on a close analysis of the situation that is brought about by the happening of the facts in this case, we find that there are now, and have been, both before and at the time of the passage of this Act, two contending forces——and it is never so possible to discover the truth as when it is revealed by the conflict of opposing elements. The two forces to which we refer are the organized seamen and the owners of vessels.

It took the Congress of the United States just twenty years to pass the Seamen's Act and during this time both forces and the public were given a full opportunity to be heard. Both sides were vitally interested, fully prepared and ably represented.

While there is a great deal of sentiment in the seaman's side of the case, the main factor in the consideration of this legislation by Congress was the economic one, and far as the real intention of Sections 4 and 11 is concerned, it was a question that vitally affected

the American Merchant Marine, at least in as great degree as it did the welfare of the seaman—and that was the question of an equalization of wages and when we consider in all of its aspects this question of an equalization of wages we immediately realize just how important the true construction of these two sections is to the American Merchant Marine as well as to the seamen.

It is common knowledge that the wages prevailing in American ports are high and it is easy to see that the vessel that ships her crew in a foreign port where wages are low, has a great economic advantage, which is greatly increased by the original cost of construction of the ship, from 33 1-3% to 50% less than in the United States. About 75% of the world's cargoes are carried by tramp steamers. It is natural, that when a seaman who is shipped in a foreign port where wages are low, arrives at an American port where wages are high, he should wish to take advantage of an opportunity to obtain better wages. On the other hand, if he is a good seaman, the owners of the vessel do not wish to lose him. Under the terms of the Seamen's Act (Section 4), the foreign seaman can demand at every American port where the vessel loads or discharges cargo, one-half of the wages which he has then earned, and he is thereby given the opportunity to obtain higher wages on another vessel without having to sacrifice altogether the rewards of his toil. When he thus quits the vessel, the foreign vessel must replace him with another seaman at the wages of the port, and there is thereby put into operation the grand theory of the Seamen's Act insofar as these two sections are concerned, viz., an equalization of wages, and the giving thereby of an opportunity to the American Merchant Marine to compete with the foreign vessel.

When one considers the extremely low wages prevailing in some European ports and especially in the Orient, one sees how important becomes the full real-

ization of the theory of Congress as to an equalization of wages. Since this case was brought in the District Court, the importance of obtaining a true construction of the Seamen's Act, that will put into effect this theory of Congress has been multiplied by the tremendous increase, present and proposed, of our Merchant Marine.

It is therefore earnestly contended that in interpreting the Seamen's Act, a proper regard must be had for the welfare of the American Merchant Marine, and that its true meaning can only be gotten at by considering the conditions which existed at the time the law was passed. The American Merchant Marine, in the over-seas trade had been gradually disappearing from the ocean from about the time of our Civil War. The advantages of cheap labor and cheap construction, when emphasized by hurtful and antiquated navigation laws and conditions which drove the American boy from the sea, were too great to be overcome by the American ship. What little opportunity there was of an equalization of the wages paid here and abroad through the foreign seamen deserting in an American port, was taken away by treaties and statutes, under which the seaman so deserting, was arrested, thrown into jail and then sent back to his vessel, and the American people were thus lending the aid of their own laws to the enjoyment of the advantage already had by their foreign competitor.

The history of the seas shows that when all other workmen were slaves, the seaman was a free man and sea-power reposed in those nations which had the best seamen. Independence, wealth and world dominion belonged to those nations that encouraged their peoples to follow the sea and carry on maritime commerce. Ships were smaller, their equipment imperfect and the seas were infested by pirates and in those days even the owners themselves recognized that the safety of their property required that their seamen be men of

resolute courage and character and these qualities are to be found only in free men. Then came the days of Mediaeval Europe when all workmen became serfs, but even then, a fair degree of personal freedom was enjoyed by the seamen, but neither nations nor ship-owners caught the great principle that underlay the question of personal liberty and they came gradually to believe that their selfish interests required that they have a stronger hold upon their seamen.

Laws were passed, making it a crime to desert the vessel in a foreign port and treaties were entered into with other nations under which deserting seamen were returned to their vessels. The former custom of paying the seamen their wages at the same time the freight monies were paid was abandoned and laws were passed providing that seamen's wages should only be paid in the home port and the seaman became, economically also, a slave. Then came the French Revolution liberating all other toilers, but the seaman was forgotten and remained a slave.

There is something about the sea, its common hazards, the nature of the seaman's calling, the fact that tradition requires him, if need be, to give up his life for the passengers, or to save his mates, which seems to call for freedom, and the nations which in the past have controlled the sea have been those whose seamen were free. This natural desire of the seaman, throughout the ages to be free, has caused him to be willing to sacrifice every other consideration to obtain it. He has always deserted, even in the old days when he was branded for so doing, with a hot iron, and in order that he might be free has been willing to give up all of his wages. Unscrupulous men ashore came to know this. The masters, of course, realized it. The seaman would desert his vessel and promise his hard earned wages to some man ashore, if he would procure for him employment aboard of another vessel and this man would go to the master thereof and bar-

gain with him about the matter. The seaman got his employment and some measure of freedom, but the "crimp" and the master got his wages.

Thus we see that the "crimping" system and the practice of paying the seaman his wages were born together and until the passage of the Seamen's Act, they always went hand in hand, not only to the destruction of the moral and economic welfare of the seaman but to his personal liberty as well. All these things were brought home to the Congress and it is interesting, as well as gratifying to note that the same section of the Act (11) which prohibited the advance also prohibited, under heavy penalties, the payment of remuneration for obtaining employment for seamen.

It needs no argument to show that the payment of his wages to the seaman in advance is essentially a bad thing and it is striking to note that at the time when all other workmen were attempting to obtain laws providing for the payment of their wages at shorter intervals, the seaman was forced to enter into agreements with shipping masters and master mariners by which he was compelled to accept the payment of his wages in advance, with the idea, of course, that he should never receive them at all, but that upon one pretext or another, by hook or crook, his wages should fall into the hands of the "crimp" and the unscrupulous master, the latter of whom often sought to increase his usually small remuneration thereby. It is easy to see that this practice also tended to further the helplessness and dependency of the seaman and to increase the hold had over him by vicious men, as well as to make more numerous the devious methods by which their ends were accomplished.

The seaman is not by nature aggressive in looking out for his own interests nor is he very thoughtful in conserving his economic welfare. It is useless to speak of the fact that the seaman has signed a con-

tract, and like other men, must be held to it, or if he breaks it, should suffer thereby as do other men who contract. In the first place other laborers, as a rule, who perform personal service, are not required to enter into contracts, and besides the conditions surrounding his employment are different and unequal. He either signs the articles and sails, or he remains a landsman.

He is not adapted by nature, nor by training to the protection of his legal rights, he is easy-going and good-natured, and because he goes to strange lands where he is unfamiliar with the language and the laws, he is more or less helpless and dependent. It is for these reasons, as well as for the high character of the service that he performs in carrying on the world's commerce, that he has been regarded as the ward of the courts of admiralty. It has for a long time been recognized that the payment of his wages in advance, puts an easy weapon into the hands of the unscrupulous, who would prey upon his helplessness and that the practice of crimping seamen had its origin in the advance, or allotment to original creditor. Finding himself unable to obtain employment without going to a crimp, he gradually came to allow himself to be handled by the crimp. The master made an agreement with a crimp to furnish men at a given wage, and with such an advance as the laws of the country, or of the port would permit and the master and the crimp divided the amount and in some instances this practice of certain master mariners became so pronounced that the managing owner demanded his share.

It is for these reasons that the Federal Courts have so often denounced the advance and that the Legal Aid Society and other benevolent institutions which have fought for the seaman, have at last obtained in Section 11 of the Seamen's Act, a law which properly enforced, will break up the practice forever.

"The story of the wrongs done to sailors in the larger ports, not merely of this nation, but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs, is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea, the sailor is powerless, and no relief is availing. It was in order to stop this evil, to protect the sailor and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

Mr. Justice Brewer in Patterson vs. Bark Eudora, 190 U. S. 169.

The learned judge, who wrote the opinion of the Circuit Court of Appeals says that he can find in the Act no expression of any intention on the part of Congress to prohibit the payment of such an advance outside the territorial jurisdiction of the United States and that he regarded the same as "malum prohibitum" only, and that therefore the payment of the advance in this case should not be disallowed to the "Talus" but was a proper credit against the half wages demanded by the petitioners. The language of the Act, is, however, broad enough to cover such an advance, and it is earnestly submitted, that even if this were not the case, the payment of such an advance ought not to be upheld by an American court, when it is passing upon the civil rights of the parties with the res before it, because so clearly opposed to our public policy.

To thus uphold the payment of the advance to seamen at foreign ports, when the vessel is bound for an American port will not only defeat the purposes of the Act, as far as the personal freedom of the seaman is concerned, but the practice will be used, as has been pointed out, to defraud him of his wages and to otherwise take advantage of him, so that if the payment of the same is to be allowed as a credit (as held by the Circuit Court of Appeals) the seaman's demand for half wages under section 4 upon arrival here, could be defeated and the whole theory of the law as to equalization of wages destroyed.

The master of a foreign vessel could, of course, avoid the loss of his crew in an American port by the very simple method of paying them the wages of the port, and by so treating the seamen that he would not wish to reship upon arrival here. In this way, he would simply be carrying out the same selfish desire to protect his own interests as actuates the seaman to leave the vessel at an American port to obtain better treatment and higher wages. The fact that the foreign ship-owner is not willing to do this, proves that behind his real opposition to the enforcement of the Seamen's Act is his altogether human and ordinary desire to pay just as small wages as possible. Even should there be no fraud in connection with the payment to the seaman of his wages in advance, the foreign owner can easily defeat the purpose of the Act and prevent the enforcement of the half wages section (4) of the same by simply paying at the port of shipment such a sum by way of advance as will equal or exceed in amount the one-half of the wages which the seaman would otherwise have been entitled to demand. The whole theory of the law as to equalization of wages would therefore fail, unless the seaman on finding on his arrival here that the payment of the advance had defeated his right to demand half of his wages under section 4 of the Seamen's Act, should be willing to quit the vessel and lose all of the wages which he had

then earned in order to obtain the wages of the port. If the construction placed upon the Act by the Circuit Court of Appeals shall prevail in this court, then, as it is the general practice among British and other foreign owners of vessels to pay their seamen wages in advance of the time they are earned, they will have at hand not only an easy method of defeating the demand of the seaman for half of his wages on arrival in American ports, but by conspiring with crimps, shipping masters, boarding house keepers, shop-keepers and other creditors of the seaman, (who get most of the advance wages paid to him anyhow), of rendering generally ineffective the provisions of the Act granting the seaman freedom from arrest for desertion, by using as a club his helplessness, and his natural desire not to lose the reward of his toil. This purpose of the act, to abolish arrest for desertion is another "thorn in the flesh" of the foreign ship-owner. This is manifested by the heavy sentences which they are even now inflicting upon deserting seamen, once they get them back within their jurisdiction. Their resentment at the extension by this country of its beneficent system of laws to them is also exhibited by their recent attempt to get the Congress to repeal these provisions of the act, and to their shame, it is most deplorably shown by their action sometimes in this country, now that they have been deprived of the assistance of federal officers, of appealing to the unscrupulous officers of municipal governments to harass the seaman by prosecutions on charges real and imaginary when he has left the ship.

I said above, that while the purpose of the Act was to equalize the wage cost of operation so that the American vessel could compete, there was also present, and urged upon the Congress, as far as the seamen are concerned, certain sentimental considerations. In the first place it is sincerely believed by the friends of the seamen, that the character of men who follow the sea depends, not only upon his wages, but upon

the manner of his treatment, the conditions aboard of the vessel and the dignity of his occupation. Following the sea is an ancient and honorable profession, and one very essential to the welfare of mankind, but it has been the one occupation that has not been allowed to keep step with the progress of the times. Up to the time of the passage of the Seamen's Act, he was the one laborer who could not voluntarily quit his task and take up another, not only was the seaman held to be exempted from the operation of the Thirteenth Amendment, which freed all other men under the American flag, but his calling was surrounded by conditions which tended to make him all the more a chattel, some of which conditions, particularly the payment to him of his wages in advance, have already been pointed out. Amongst other evils surrounding the occupation there grew up the shameful practice of "Shanghaeing," also a bye-product of the advance.

It also should not be forgotten that the treatment of seamen aboard some vessels, by the masters, and the condition of the forecastles, the "prisons of the sea," often compelled the seaman to leave one vessel and go to another, even at the price of losing all of his wages. All of these conditions affected the seaman's life and determined whether his calling should be an attractive one, for it is common knowledge that free men, especially those of the Anglo Saxon race, are not induced to follow an occupation surrounded by the foregoing conditions.

Therefore, in considering the problem of a true construction of the Seamen's Act, as far as these two sections are concerned, it is necessary that we consider not only the fact, that because of these conditions the American Merchant Marine was rapidly disappearing from the ocean at the time of the passage of this act, but that the number of seamen from the other enlightened nations of the world was also on the decline and

that those from the low paid laborers of Europe and especially from the Orient, was on the increase.

This brings me to a consideration of another sentimental side of the seaman's case, which, like the theory of equalization of wages, affects the great public. It is very striking that under the above conditions, causing the scum of the labor market of Europe, Chinese, Malays and South Africans to follow the sea and turning away from it the high spirited men of the free peoples of the earth, there was increased amazingly the danger of travel by sea and the world was shocked by many great horrors and disasters, such as the "Titanic." As her equipment became more splendid, her appointments more luxurious, and her size multiplied many times, the character of the men who sailed her so deteriorated that the Congress of the United States saw that something must need be done not only to give the American Merchant Marine a chance to live, and to grow, but as the very title of the Act expresses it, "To promote safety at sea."

There was also urged upon Congress at the time this law was before it, another idea, which the events of the past few years have shown to be of transcendent importance to the American people, and that idea is that sea-power is in the seaman, and that a nation without sea-power cannot long endure. The ship and her equipment are only tools and without a trained crew to use them she would "rot in her neglected brine." As without trained seamen of a high class from the nation to which the vessels belong, there can be no merchant marine worthy of the name, so, without a merchant marine, there can be no naval reserve.

"Spain, once all powerful on the sea, could not man the battle-ships which fought under her flag at Trafalgar (Mahan, *Sea-Power in History*). The Spanish Armada is often said to have been overcome by the elements and the proud Philip so declared; but Professor James Anthony Froude in his lectures, 'English Sea-

men of the Sixteenth Century,' gives the true explanation. England was sending some of her best blood to sea and her seamen so improved the rig and sailing qualities of their vessels that they 'could work to windward with with their sails trimmed fore and aft.' The foremast was changed into a jib boom; the aftermast into a spanker boom; fore and aft sails were put on them; the trusses were improved and the English vessels could fight under sail. 'The English ships had the same superiority over the galleons which steamers now have over sailing vessels. They had twice the speed; they could lie two points nearer the wind.' Favored by a brisk wind they could chose their own positions from which to use their guns. It was better vessels designed and handled by better seamen that destroyed the Spanish Armada. 'It was to the superior seamanship, the superior qualities of English ships and crews, that the Spaniards attributed their defeat.' (English Seamen of the Sixteenth Century, p. 4).

"When the Revolutionary wars opened the fleet of France was, in vessels, men and guns, about equal with the English; but England could reman her vessels five or six times, while France could not do so once. France had to resort to landsmen, whom she trained in harbor until they could dismantle and re-rig the vessels with remarkable speed; but after a gale at sea the vessels were like wrecks. The English vessels might leave the harbor looking like wrecks; but after a couple of days at sea, they were in the very best of trim and fitness. (Mahan, Sea-Power in History.)"

The above quotation is from "American Sea-Power and the Seamen's Act, by Andrew Furuseth.

Senate Document 228, 65th Congress, 2nd Session.

The soundness of this theory of the law is not only supported by reason, but is shown by the practical operation of the law. It is not only adapted, when properly enforced, to equalize wages, but is actually accomplishing that very thing.

"The effect of the Seamen's Bill as enforced, particularly as to the provisions relating to advance notes or advance wages, and the right of seamen to collect half their wages in American ports, as applicable to American and foreign vessels, is by far the greatest and most important of anything that has transpired in the shipping world in a long time. The Legal Aid Society took action in favor of abolishing the advance note or of making a law abolishing the payment of wages in advance of the time earned; this action was taken when the bill was pending before the Committee on Merchant Marine and Fisheries in Congress. Our activities were in line with the provisions of the Seamen's Bill, abolishing involuntary servitude and removing the remedies given to foreign governments and foreign ship-owners, to arrest seamen who desert in ports of the United States. Seamen, being given a right on American and foreign vessels alike, to demand one-half wages, or half the wages earned by them and unpaid, in American ports, have been able to enforce that right by the provision of the law which enables them to bring suit for the full amount of wages owing them, in case the master refuses to pay them half. I am inclined to believe the theory and actual operation of the Seamen's Bill is bound in time to prove its soundness and efficiency.

"I am informed that seamen coming here on foreign vessels which are sent to American ports to compete in American trade leave their vessels unless the Master voluntarily guarantees them an increase in wages, which will bring their earnings up to a par with the average earnings of American seamen, and other seamen in American ports, which have already arrived at the American standard. As a rule, seamen on foreign ships demand one-half their wages and then quit. The result is, the foreign ship's master must refurnish his vessel with a crew before leaving. To do this, he must apply to shipping masters or one of the Seamen's Institutions who supply seamen, but he has to pay the going rate of wages in the port of New York or Norfolk, or whatever port he happens to be in.

"One need not be a mathematician or a student of economy to conclude that the enforcement of this legislation means the creation of an opportunity to the American ship-owner to compete with foreigners on a par, so far as the labor cost is concerned, and secondly, gives America an opportunity to build up a Merchant Marine by reason of the fact that higher wages are paid on board all vessels, and rules for Safety Appliances, better food, larger crews' quarters, and general conditions on board are enforced on American vessels." (41st Ann. Report, Legal Aid Society.)

If the Seamen's Act shall result in promoting the welfare of the American Merchant Marine, it will of course, extend American commerce generally, and benefit all of our people for it is well-known that it is the merchant ship and those who go with her that bring to us commercial information as to other peoples and their methods of trade, and thereby pave the way for the entrance of our goods.

There has always been something peculiar about the things of the sea. Maritime commerce is not like commerce by land, and the calling of the seaman has always been regarded as a peculiar one, and it has been for this reason that it has been regarded as necessary to impose upon him the condition of involuntary servitude. It is therefore not unnatural, when we consider the length of time this legislation was under consideration by Congress, the peculiar conditions surrounding the subject, and the fact that it was bitterly fought over, that the "Seamen's Act" should be somewhat technical, and in submitting to this honorable court the theory that it was the purpose of Sections 4 and 11 to equalize the wages paid by American and foreign vessels, I have included this discussion of the general purposes of the Act, and the conditions existing before its passage, because I believe that resort must be had to all of these to arrive at a true construction of these sections. And this honorable court has

laid down the rule that whenever any doubt arises as to the intent of an act of Congress, the whole act must be construed together.

In endeavoring to submit to the honorable court the economic purpose of the Act, I desire to say that to my mind the loftiest purpose of the Act is to extend to the seaman as a human being, the foreign seaman, as well as our own, a full measure of personal liberty and that he might thereby attain unto that character and standing, which is to-day the opportunity of all other classes of labor, and it is submitted also that it is only in this way, and by the consequent lifting of the dignity of the occupation that the free people of this great land can be induced to follow the sea—and also that there might be accomplished through better seamen that other great purpose of the Act, the promotion of safety at sea.

SECOND POINT.

THE LEGISLATIVE HISTORY OF THE SEAMEN'S ACT SHOWS THAT ITS PURPOSE WAS TO EQUALIZE WAGES.

There can be no question that the former acts of Congress dealing with our Merchant Marine and Merchant Seamen had failed and that at the time the Seamen's Act of March 4, 1915, was under consideration Congress appreciated the failure of these old laws, recognized that the American Merchant Marine was in a state of decay, had presented to it the reasons therefor, and saw clearly that something must be done, or we would be swept from the seas. Not only had the need of such legislation been urged upon Congress for twenty years, but an act substantially the same as the present one was actually introduced in the 56th, 57th, 58th, 59th, 60th, 61st and 62nd Congresses and the present act was passed by the 63rd Congress.

The general purpose of Congress to get away from the old theories and the old laws, is first of all shown by the abrogation of treaties. We had treaties with

practically all of the important maritime nations, under which foreign seamen were held in involuntary servitude, and all disputes concerning seamen's wages and the internal discipline of the vessel were left to the respective consuls of these nations. Not only so, but they were even permitted in engaging seamen in American harbors to pay wages in advance, regardless of the American statute prohibiting our vessels from doing the same. We had no treaties with Great Britain, Russia or Japan. There is a vast amount of American capital invested in foreign ships and these interests, as well as the foreign owners themselves, bitterly contested the taking away from them of their old advantages over the American Merchant Marine and their old hold over their seamen. This idea that the seaman should be made free was revolutionary. No other nation in modern times had conceived of such a thing.

These interests had able supporters in Congress. On August 5, 1912, the act was submitted to the Senate and referred to the Committee on Commerce, by which it was referred to a sub-committee. On February 26, 1913, Senator Burton, Chairman of the sub-committee, reported the act back to the Senate, with an amendment in the nature of a substitute, in which the half-wages section contained the following provision.

"Provided further, that this section shall apply to seamen on foreign vessels owned in major part by American citizens, corporations or holding companies, when such vessels are in harbors of the United States."

The Act was passed, but the President did not sign it and it did not become a law. It was introduced in the same form at the next session, but Senator Lafollette offered as a substitute the act in its present form, which was passed and signed by the next President, Woodrow Wilson. The above provision limiting the scope of the act, so as to save foreign vessels failed.

Speaking in opposition to the act as it now stands, Senator Burton said, in part:

"The bill is ingenious from the standpoint of the seamen. I am not going to blame them for that. It has three provisions: First, a man may desert without arrest; second, at any port, on giving forty-eight hours' notice, he may have half of his pay; third, no allotment shall be given out of his wages.

"That makes it possible for the sailor to leave his employment wherever he chooses, and whether his contract is finished or not, whether the time for payment has accrued or not, he may receive half his wages."

The Senator attacked these provisions of the act as violative of the principles of international law. Evidently not mindful of the fact that the efficiency of former legislation in this behalf had been killed by a saving clause, excepting from its operation matters regulated by treaties, the enemies of the bill attempted to add to Section 4, the following provision:

"Provided that treaties in force between the United States and foreign countries do not conflict herewith."

This proviso was lost and the act as finally passed uses the following language: * * * and any other treaty provision in conflict with the provisions of this act, ought to be terminated, etc."

When the act was before the 62nd Congress, at its Second Session, it was referred to the Committee on Merchant Marine and Fisheries, which committee reported to the House, in part, as follows:

"Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in ports of the United States; hence the operating expenses of foreign vessels are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, but it is proposed by this bill to give

the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyages. That will equalize the cost of operation, so that vessels of the United States will not be placed at a disadvantage."

(Report 645, 62nd Congress, 2nd session, p. 7.) A minority of the Committee, recognizing and admitting the purposes of the bill as reported, submitted a minority report, which reads, in part, as follows:

"Those who favor this bill strongly opposed amendments offered proposing to limit the scope of the bill to our own sailors and our own ships. We think this nation is undertaking a large and unnecessary task in assuming to tell foreign nations how they shall man their ships, what contracts they shall make with their own seamen, how they shall pay them, what their qualifications shall be, and even dictating to them the language that their crews shall speak—not on American ships, remember, but upon their own ships and upon every vessel that comes into our ports. It is proposed to do all these things in this bill. In other words, since Congress by its stupidity, its lack of intelligence or patriotism, has driven the American ship from the ocean, we now solemnly undertake to regulate and control all the ships of all the other commercial nations of the world, not for our own benefit, not because any American citizen has complained, but for the benefit and upon the complaint of foreign sailors that are unable to receive, as is claimed by their American representatives, just and proper treatment from the nations that they continue voluntarily to serve."

(62nd Congress, 2nd Session, Report 645, part 2, pp. 2, 3, 5.)

During the time when the present act was in the course of its final victorious passage by the 63rd Congress the Committee to which it was referred, reported to the House of Representatives, in part, as follows:

"It is claimed that by making the provisions in Section 3 of the Senate Bill and Section 4 of the Committee substitute (the half-wages section—now Section 4, of the Seamen's Act) apply to foreign ships it will tend to equalize the operating expenses of vessels. It is also claimed that the provision of this bill abolishing arrest for deserting would be largely annulled if the foreign ship-owner may by the terms of his contract deny the seaman the right to receive in our ports any part of the wages earned by him; that while the deserting seaman would not be subject to arrest, he would be compelled, if he deserted, to do so without a penny in hand to buy bread or procure a night's lodging; and it is claimed also that if American vessels are subject to the provisions allowing seamen to demand half their wages earned, while foreign vessels are not, the ship-owner might and probably would put his ship under foreign flag, to avoid this obligation." * * *

"As the provision now stands it discriminates against the ship-owner of the United States and Great Britain and of those other nations with whom we have no treaties in conflict with it, if it is a real burden on ship-owners. If, however, giving greater freedom to the seaman shall operate not only to equalize, but to elevate and better the condition and service of the seaman, which is its purpose, then the provision will justify itself and be of benefit to the American Merchant Marine in equalizing the cost of operation as between our ships and those of other nations."

Report 852, 63rd Congress, 2nd Session, pp. 19 and 20.

During the time the bill was pending before the different sessions of Congress, an opportunity was given to those interested to be heard before the committees of the Senate and of the House, having the bill in charge, and the seamen submitted their petitions and memorials, the most specific and urgent of which was presented by Honorable William B. Wilson, (now the Honorable, the Secretary of Labor), which read, in part, as follows:

MEMORIAL TO CONGRESS.

To the Honorable, the Senate and House of Representatives of the United States:

On behalf of the seamen, your petitioners respectfully represent that—

While the existing discrimination against the seamen is permitted to continue the United States cannot become a sea-power; that native Americans will not become seamen; and that the differential in wage cost of operation will prevent American vessels from competing on the ocean.

Under the treaties with foreign nations and these laws seamen, having signed contracts to labor in countries having a lower standard of life and a lower wage, were forcibly compelled to continue to labor within the jurisdiction of the United States.

This produced a difference in the wage cost of operating vessels taking cargoes from ports of the United States, the difference being in favor of the foreign vessels, and sufficient in amount to gradually drive domestic vessels from the ocean. (Testimony, Merchant Marine Commission.)"

The history of Section 11 of the Act, which prohibits the payment of advance wages, also shows clearly and unmistakably the purpose of Congress to bring the foreign vessel within its terms, and not only to prohibit the payment of the advance in American ports but to so regulate the payment of seamen's wages, as to prohibit the payment of the same abroad by any vessel bound for an American port. There was the same bitter fight over the provisions of the act making it applicable to foreign vessels and the result was that when the act passed the 62nd Congress, the Section (11) prohibiting the payment of wages in advance was limited to advances paid within the territorial jurisdiction of the United States by amending sub-section (e) to read as follows:

"That this section shall apply as well to seamen engaged in ports of the United States for service on foreign vessels as to seamen employed on vessels of the United States. * * - *"

Before this sub-section had been thus amended it read as follows:

"That this section shall apply as well to foreign vessels as to vessels of the United States *

* * *

At the next session, the 63rd Congress passed the bill in its present form and the President signed it and it is respectfully submitted that by changing this provision of the bill so as to make it apply "AS WELL TO FOREIGN VESSELS AS TO VESSELS OF THE UNITED STATES" instead of merely "TO SEAMEN ENGAGED IN PORTS OF THE UNITED STATES FOR SERVICE ON FOREIGN VESSELS," the Congress showed beyond a doubt that the purpose of the law was to prohibit the advance to the full extent for which I have contended and to thereby equalize wages and to make possible the enforcement of the other humane provisions of the Act.

This deliberate purpose of the Act is still further shown by the fight which ensued in the Senate, just before the bill was finally passed, over the following proviso which was sought to be added to sub-section (e) by the friends of the foreign vessel:

"Provided, that treaties in force between the United States and foreign nations do not conflict."

This proviso was defeated and the bill as finally passed, not only abrogated certain provisions of our foreign treaties, but also "any other provision in conflict with the provisions of this Act."

THIRD POINT.

THE THEORY OF THE CIRCUIT COURT OF APPEALS IS WRONG.

The conclusion which I have reached by a consideration of the conditions existing at the time the Act was passed and the purpose of the Act as shown by its legislative history would also be reached if we gave to

the language of the Act its ordinary meaning. The Circuit Court of Appeals did not give to the language of the Act its clear meaning but held that there must have been an intention on the part of Congress to limit the ordinary meaning of the language used because the Act provides a criminal penalty for the payment of advance wages as well as a civil remedy for the recovery of the full wages regardless of the advance. Congress could not have intended to punish the master of a foreign vessel for an act committed beyond the jurisdiction of the United States. It must therefore have meant only to punish the payment of advance wages within the harbors of the United States, and therefore, argues the court, it must also have intended the civil remedy provided by it to run concurrently with the punishment for the crime.

In giving this construction to the Act, the learned court not only overlooks the remedy which the Act has provided and the purposes to be accomplished by it, but has hit upon a theory of construction which is supported by no recognized legal rule of interpretation of statutes. In the first place it fails to give to the clear language of the Act, which is unambiguous, its ordinary meaning.

Bernier vs. Bernier, 147 U. S. 246.
Washington Market Co. vs. Hoffman, 101
U. S. 115.

In the second place it holds that where an act contains both a criminal and civil provision, the civil provision should be limited by the application of the criminal, and if the remedy sought to be furnished by the punishment of the crime should fail, for reasons of questionable constitutionality, the civil remedy should also be struck down, or rather should be so limited by a consideration of the application of the criminal provision as to give it the same field of operation, whereas the reverse is true.

United States vs. Twenty Five Packages of
Hats, 231 U. S. 358.

Respectfully submitted,

ALEX. T. HOWARD,
Proctor for Petitioners.

September 16, 1918.

I hereby accept service of a copy of this brief, this
the 16th day of September, 1918.

PALMER PILLANS,
Of Counsel for the Respondent.

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STATEMENT OF THE CASE

This was a libel brought under the so-called "Seamen's Act." The libel was filed by Erik Sandberg, Carl Jannson, Magnus Persson, Andreas Evanger, S. K. Benjaminsen and John Peranes. At the hearing it developed that in no aspect of the case were Persson and Evanger entitled to recover, and the libel was therefore dismissed as to them. As to each of the others, a decree was rendered in his favor against the ship and the sureties on her claim bond. This brief will deal, therefore, only with the cases of those libellants in whose favor decrees were found, by the learned district judge, reference to the "libellants" throughout intending the successful libellants.

The libel, besides the necessary formal parts, charges a demand, at Mobile, made under the Seamen's Act, for a one-half part of the wages then earned, and a declination by the master to pay the amount the seamen claimed to be due. There was not a total failure to pay, but a computation by the master of amounts less than the seamen claimed to be due. The master paid each of them what he (the master) conceived and computed to be due, and the amount in controversy, as to each man, is the difference between what he got and what he claimed he should have had. (Rec., 20).

The answer set up two defenses, either of which, if correct, would defeat libellants' causes of action. The first was that the master was entitled to deduct, in computing what was to be paid, the advances made to the seamen upon their signing on. This defense was sustained by the learned Circuit Court of Appeals for the Fifth Circuit, and is the question now agitated here. The second was adjudged against the ship by both the courts below, and is therefore no longer in the

case. (The libel is set out on pages 4 to 6 of the record, and the answer on pages 8 to 10).

There is no dispute about the facts; they are set out in the shape of an agreed statement of facts on pages 19-20 of the record. Reducing that statement to narrative form, the status on which the cause was determined may be thus put:

The "Talus" was a duly registered British ship and all libellants were citizens or subjects of nations other than the United States and were employed as seamen at Liverpool in the Kingdom of Great Britain. At the time of their employment, before they boarded the ship or performed any service upon or for her, they were made advances at Liverpool by the ship or her agents, which advances did not, as to any libellant, exceed the amount of one month's wages.

The making of such advances in British ports, to the amount of one month's wages, is not forbidden by the laws of Great Britain, and is usual and customary.

Libellants regularly entered upon their service as sailors and remained on the ship during her voyage across to Mobile, and remained on her in Mobile harbor until they left the ship on February 24th, 1917.

During the voyage across, at Barbadoes and at Mobile prior to February 22nd, 1917, libellants had received payments in cash and in articles furnished and charged to them, in amounts which are without dispute.

The "Talus" discharged and loaded cargo at Mobile and remained at Mobile until after February 24th, 1917. While she was thus at Mobile, the libellants on February 22nd, demanded of the

master of the "Talus" payment of the one-half of the wages earned by them to that date, whereupon the master paid to each libellant a sum which, with the credits just above mentioned as the undisputed credits, and with the said advances made at Liverpool, equalled or exceeded, as to each libellant, one-half of the wages then earned by each libellant from the commencement of his services, but which was less than such one-half if the advances at Liverpool were not to be included in the credits charged against each libellant. The master claimed the right to credit or deduct the advances made at Liverpool, and refused to pay without taking into account such advances, and in making the payments that he made, he did in fact deduct the advances.

The sums paid by the master at Mobile to each libellant, as to each libellant exceeded the total amount of wages earned by such libellant during the eleven days the ship had been in American waters, she having arrived on February 11th, at Fort Morgan, at the entrance of Mobile harbor.

On February 23rd, 1917, libellants libelled the ship, and on February 24th, 1917, quit the vessel, removing their clothes and effects, and were duly logged as deserters on that day.

It was further agreed that the amount four by the District Court to be due to the libellants, is correct if the court were right in holding that the advances at Liverpool should not be deducted; and it was further agreed that if the advances should be deducted and the District Court erred in holding that they should not be deducted, then the proper decree would be to dismiss the libel as to all libellants.

From the decree of the District Court, claimant appealed to the Circuit Court of Appeals for the Fifth Circuit, which court reversed the trial court and remanded the cause with instructions to dismiss the libel. Libellants thereupon applied to this court for and got a writ of *certiorari* to bring the matter for review before this court.

This statement of the case is made because the statement in the brief of petitioner's leading counsel is very meagre, and is framed in an argumentative fashion rather than as a direct allegation of the facts; and the statement in the brief of petitioner's associate counsel, while fuller and not put argumentatively, still, as it seems to respondent, leaves the case short of that clear picture of the foundation facts that an appellate court must have to review properly a decision.

BRIEF OF THE ARGUMENT

The statutes of the United States condemning and penalizing advances to seamen, and declaring that such advances shall not be charged against the seaman, but that he may recover full wages just as though such advances had not been made; have no application to advances made upon the shipment of a foreign crew by a foreign vessel in a foreign jurisdiction. This being so and it being conceded that the advances in the instant case were made in Great Britain and were lawful there, it must follow that they are proper charges against the seamen, and therefore must be deducted in computing what amount is due them; for it can hardly be, and is not in this case attempted to be, gainsaid, that if a seaman, at the time of demand made, has already been paid a sum of money

which equals or amounts to more than one-half of the wages earned since the beginning of the employment, and such payments were lawful, he is not then entitled to anything at all.

Act of Congress of March 4th, 1915, (commonly styled the "Seamen's Act") Sections, 4, 11 (a) and 11 (e); 38 Stats. at Large, 1164 at 1165, 1168 and 1169 (U. S. Compiled Statutes of 1916, Secs. 8322, 8323 (a) and 8323 (e).)

Sub-section 10, cl. (a) and cl. (f), of Sec. 24 of Act of Congress of December 21st, 1898; 30 Stat. 755, 763.

Section 10 of the Act of Congress of June 26th, 1884, commonly known as the Dingley Act, 23 Stats. at Large, 55-6.

The State of Maine, 22 Fed., 734.

The Windrush, 250 Fed., 180.

The Elswick Tower, 241 Fed., 706, at 710.

Patterson vs. Barque Eudora, 190 U. S., 169, at 178, 179.

American Banana Co. vs. United Fruit Co., 213 U. S., 347, at 357.

U. S. vs. Freeman, 239 U. S., at 120.

Kenney vs. Blake (C. C. A. 9th Circ.) 125 Fed., 672.

The Alnwick, 132 Fed., 117.

The Neck, 138 Fed., 144, at 146.

The Bound Brook, 146 Fed., 160, at 162.

The Kestor, 110 Fed., 432, at 434, 438, 441, 442 and 444.

The Troop, 117 Fed., 557, at 560.

The Meteor, 241 Fed., 735.

The London, 241 Fed., 863 (affirming The London, 238 Fed., 645).

The Antelope, 10 Wheaton, 66.

Northern Pac. R. Co. vs. Babcock, 154 U. S., at 198.

ARGUMENT

Patterson vs. Barque Eudora, 190 U. S. 169, settled that it is within the power of Congress to subject foreign vessels and foreign seamen to our advancement statute when the contract of shipment and the advancements are made in an American port. This, however, is all that the case does settle, for the point for decision and the point decided was as stated above. This clearly appears from the facts of the case, the questions certified to the Supreme Court from the Circuit Court of Appeals and the concluding paragraph of the court's opinion on page 179:

"We are of opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels." (Our emphasis).

This advancement law is not a new legislative idea stated first in the Seamen's Act of 1915. It came into being in the "Dingley Act" of June 26th, 1884 (23 Stats.-at-Large, 55-56). This Act was amended several times; among others, by the Act of December 21st, 1898, which was the one under consideration in the

Eudora case; and was finally amended into its present shape by the Seamen's Act of 1915, now under discussion.

The statute in its successive phases has been repeatedly before the inferior Federal courts for construction, but (unless we except **The Ixion**, 237 Fed., 142, which proceeds along a different line of idea and is not really an exception), no case prior to **The Imber-horne**, 240 Fed., 830, had held the statute applicable in such fashion as to condemn as unlawful and not to be taken into computation, advances made upon the shipment of foreign seamen on a foreign ship in a foreign port where the advances are lawful.

The first case to arise under Section 10 (the advancement section) of the Dingley Act (Act of 1884) was **The State of Maine**, 22 Fed., 734. In that case an American ship, in Antwerp, was obliged to pay advances in order to procure a crew, and it was held by that very able admiralty judge, Addison Brown, that the Act did not apply even to an American ship shipping seamen in a foreign port where the payment of the advance was legal. I respectfully commend to the court's attention the opinion in that case.

The sovereign attribute of absolute jurisdiction within its own boundaries, of every nation, necessarily exclusive of the jurisdiction of any other sovereign, is admirably stated by Chief Justice Marshall for the Supreme Court in the **Schooner Exchange vs. McFaddon**, in 7 Cranch, quoted on p. 177 of the opinion in the **Barque Eudora** case in 190 U. S. Of course a statute of one sovereign can have no extra-territorial effect—it cannot extend to and affect transactions had in another sovereignty. The very doctrine applied by our court in the **Eudora case** making foreign ships subject to our jurisdiction and our laws while within our territorial boundaries, by the same reasoning saves them

from subjection to our jurisdiction and our laws as to acts lawfully done in another sovereignty—that is lawfully done with reference to the laws of that other sovereignty. This point is made and clearly put by Judge Brown on p. 735 of the opinion in the State of Maine case in the 22 Federal *supra*. It is also stated in *The Elswick Tower*, 241 Fed., 706, at 710, in this language:

***** the law of the flag applies where a foreign crew is shipped in a foreign land on a foreign vessel."

The language of Sec. 10 of the Dingley Act, making this advancement applicable to foreign vessels, is this:

"This section shall apply as well to foreign vessels as to vessels of the United States, and any foreign vessel, the master, owner, consignee or agent of which has violated this section, or induced or connived at any violation, shall be refused his clearance from any port in the United States."

Now, there clearly cannot be a violation of a law of the United States, or of any other sovereign, save within the territorial jurisdiction of that sovereignty, including in the phrase "territorial jurisdiction" the fictitious extension of the territory to the person, so-to-speak, of each ship of that sovereignty as a sort of floating fragment of its national territory. To put it another way, there cannot be a violation of the laws of the United States by an act done in Great Britain by a British subject and lawful under British laws. The language of the Act does not restrict the territory to which it is applicable, but the necessary restrictions by recognized conceptions of law are such as to make

a specific restriction, in terms, to the United States, entirely unnecessary and idle. Apparently no one thought, prior to **The Imberhorne**, that this statute could have any application to acts done outside of the territorial jurisdiction of the United States. Thus in the **Eudora** case the court say, on p. 178 of the opinion in 190 U. S.:

"And this legislation as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as domestic vessels." (Our emphasis).

One can hardly read the numerous adjudications under this statute without being struck with the careful guarding and confining by the courts, just as was done in **The Eudora case**, of the statute's application to the shipping and advancing or other acts done in the territorial jurisdiction of the United States.

When the Act of 1884 was amended in 1898, the section applying the advancement provision to foreign vessels, read thus:

"That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions, shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation: Provided, That treaties in force between the United States and foreign nations do not conflict."

It will be noted that this differs from the similar provision in the Act of 1884 in that it leaves out the

- denial-of-clearance provision, fixes a criminal liability upon the foreigner who violates the Act, and makes a saving exception with reference to treaties that may conflict with the Act. Now, it could hardly be contended that a master of a British ship, who had shipped a foreign crew in a British port, could be prosecuted, when the vessel should come within the territorial waters of the United States, because he advanced to the seamen, lawfully under the laws of Great Britain, an amount of money which would be unlawful if done within the United States. In the very nature of things, no man can have "violated" the provisions of the Act unless he do something counter to the provisions of the Act within the territorial jurisdiction of the sovereign passing the Act. Of necessity, to come within reach of the Act of 1898, the things done must have been done within the territorial jurisdiction of the United States.

The same application of the statute of 1898 was made in *The Kestor*, 110 Fed., 432, in what is perhaps the most elaborate opinion in any of the cases in the inferior Federal courts, on this subject. The idea stressed by a number of cases is that while there is no question of the doctrine announced in *The Eudora, supra*, (that the language of an Act controls the title, and that this Act is applicable to foreign ships notwithstanding that it is an Act for the relief of American seamen) yet that the Act is in all of its terms and purposes essentially an Act for the protection of Americans, and its application to foreign vessels is an incident to that effort to protect—not an attempt on the part of the United States to take the world under its protecting legislative wing. This idea is notably expressed by Judge Brown in *The State of*

Maine, supra. And in **The Kestor, supra**, Judge Bradford thus addresses himself to the subject:

"Such prepayment (that is payment of advances contrary to statute) was denounced by the statute, on the assumption that it is operative in case of British seamen shipping in American ports on British vessels * * * Protection to seamen is one of the beneficent purposes of the Act, and the extension to foreign seamen **SHIPPING IN AMERICAN PORTS** of the same protection as is accorded to American seamen involves no hardship or injustice to the former * * * The broad purposes of the section, undoubtedly, were the protection of American seamen and the promotion of the welfare of the American merchant marine. The prepayment of seamen's wages, either to them, or to others by way of bonus or commission for supplying them to vessels, or on account of indebtedness contracted by them, was found injurious to seamen and detrimental to the merchant service. These were the evils the legislation in question was intended to correct. (Citing and quoting from **The Eclipse**). It was necessary to the most effectual or, indeed, to any substantial accomplishment of the purposes of the section, that a uniform rule should be applied alike to all seamen of whatever nationality **shipping in American ports** on vessels whether American or foreign. To apply the rule to American seamen shipping on American or foreign vessels, and to foreign seamen shipping on American vessels, but to deny its application to foreign seamen shipping on foreign vessels, would open wide the door to fraudulent evasions of the law, produce uncertainty and embarrassment in its enforcement, and largely

defeat its purpose. * * * For the reasons given, I am satisfied that the provisions of the section were intended to apply to the case of foreign seamen shipping in American ports on foreign merchant vessels. * * *

Congress has no authority to declare unlawful or provide for the punishment of acts or offenses wholly done or committed beyond the territory and jurisdiction of the United States. But with respect to subjects committed to it by the Constitution, it has full power to declare unlawful and to provide for punishment of acts and offenses done or committed within the territory or jurisdiction of the United States. The shipping interests of the country are peculiarly within the province of Congress, and it has full control over the American merchant marine. That Congress had authority to enact uniform laws declaring unlawful and providing penalties for prepayment on the soil or in the ports of the United States of the wages of seamen of whatever nationality, as detrimental, for the reasons already given, to seamen and the American merchant marine, there can be little or no doubt." (Our emphasis).

The Kestor, 110 Fed. Opin. at p. 434, 438, 441, 442 and 444.

This holding in **The Kestor** and Judge Bradford's reasoning and opinion, were approved, followed and adopted in **The Troop**, 117 Fed., 557, at 560. The **Troop** case was appealed and was affirmed by the Circuit Court of Appeals for the 9th Circuit *sub nom. Kenney vs. Blake*, in 125 Federal, 672.

So in **The Neck**, 138 Federal, 144, at 146, the same construction is put upon the holding in **The Eudora**,

the Court saying in the opinion at p. 146 of the 138 Federal:

"By decision of the Supreme Court in the case of **The Eudora**, 190 U. S., 169, **foreign ships in ports of the United States** are subject to the same restrictions as merchant ships of this nation in the matter of hiring seamen, imposed by the Act of Congress of 1898."

And in **The Bound Brook**, 146 Federal, 160, at 162, Judge Dodge of the District of Massachusetts, says:

"The decision in Patterson vs. The Eudora, 190 U. S., 169, establishes that section 24 of the Act of 1898, which by its terms (Clause f) is made applicable to foreign vessels as well as to the vessels of the United States, does properly so apply; and, therefore, so far as affects all contracts of shipment made in the United States, though for service on foreign vessels, that wages paid in advance at time of shipment, may be recovered on completion of the voyage as if they had never been paid, although such payments are not due either by the terms of the contract or according to the law of the country to which the vessel belongs."

Ought it not to seem plain on principle and adjudged authority that the advancements statute has no effect except upon advancements made to seamen within the territorial jurisdiction of the United States? But to make it still plainer, the statute as it now stands has not left the language as it was throughout the time of the decisions cited, but has ~~ex~~ industria in terms confined the application to the waters of the United States. Congress has also reintroduced the

clearance clause that Judge Brown so strongly commented on in *The State of Maine, supra*. That portion of the Act is clause (e) of Section 11 of the Seamen's Act of March 4th, 1915, and is contained on p. 1169 of the 38 Statutes at Large. The language is this:

"That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions, shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance in a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with." (Our emphasis).

A well known and often-acted-upon doctrine of the construction of statutes, is that when a statute has received a well defined judicial construction and is re-enacted without substantial change in that particular, the judicial construction is adopted by the lawmaker as the proper construction of the statute. (See e. g., *The Windrush*, 250 Fed., 180, at 183). The authorities hereinbefore cited, abundantly show a specific judicial construction of this provision of the Act and an application of it to foreign ships only while in American waters. If the intention of Congress had been to attempt to do what the learned District Judge in the instant case held, and the seamen here insist, that Con-

gress has done, surely it would seem, it is respectfully submitted, that apt words would have been put into the statute to show that Congress clearly intended to depart from this judicial construction and extend the meaning and purpose of the statute beyond that. But Congress not only did not do this, but, on the contrary, apparently wrote into the statute itself, in express words, the judicial construction already adopted by the courts. By the very charter of libellants' rights under which they claim to be paid one-half of the wages earned without any deduction of advancements, it is declared that the advancements portion of the statute has application to foreign vessels only while in waters of the United States. What office have these words to perform in the statute unless it is to confine the condemnation of advances to advances made within the territorial jurisdiction of the United States? If they be deprived of that office, then they seem to be mere idle verbiage in the statute—which this court will not willingly ascribe to Congress.

Heretofore in this brief have been set out in the argument quotations from apposite parts of, and comment on and reference to the several Acts touching the matters discussed in this case. Perhaps a clearer understanding of the ideas attempted to be expressed in this brief, will be aided by now setting out the text of the said apposite portions of the said several Acts, in their chronological order.

The first is the Dingley Act:

"Sec. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay any

person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen. Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than four times the amount of the wages so advanced or remuneration so paid, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages: * * * This section shall apply as well to foreign vessels as to the vessels of the United States; and any foreign vessel, the master, owner, consignee, or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States."

Act of June 26th, 1884, 23 Statutes at Large,
Chap. 121, Sec. 10, pp. 55-6.

Next comes the statute of 1898, construed in **The Eudora case:**

"Sec. 10. (a) That it shall be and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person. Any person paying such advance wages shall be deemed guilty of a misde-

meanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be liable to a penalty of not more than one hundred dollars.

* * *

(f) That this section shall apply as well to foreign vessels as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for a similar violation: Provided, That treaties in force between the United States and foreign nations do not conflict."

Act of Dec. 21st, 1898, 30 Statutes at Large,
Chap. 121, pp. 755-763.

Then comes the Seamen's Act of 1915, under which this case arises:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from

the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract, and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in Section forty-five hundred and twenty-nine of the Revised Statutes; And, provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Act of March 4, 1915, Chap. 153, Section 4
(Sec. 8322 of U. S. Compiled Statutes
of 1916).

"It shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may

also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages * * * shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor, and shall be imprisoned not more than six months or fined not more than \$500.

* * *

This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Same Act, Sec. 11, clauses (a) and (e). (Compiled Statutes of 1916, Sec. 8323, clauses (a) and (e):

And see the pertinent portions of the Acts of 1884 and 1915 set out in parallel columns by Judge Hough in **The Windrush**, 250 Fed., on p. 181.

It was urged below (and the learned District Judge was persuaded to hold) that, as the advancements section makes the payment of an advance unlawful "in any case," and provides that the payment of advanced wages shall "in no case" absolve the vessel, etc., from full payment of wages, the court is bound, notwithstanding that a lawful advance was made in another jurisdiction and out of the territorial jurisdiction of the United States, to disregard the legality of the advance where made, condemn it and decline to deduct it. It is respectfully submitted that this line of reasoning overlooks two essential factors.

The first is that the United States cannot make it unlawful to do an act in another sovereignty. That phase has been fully discussed hereinbefore. The court will not hold, in the absence of language making such holding imperative, that Congress intended to attempt to do that which is manifestly impossible in accord with our notions of national separate entity. There is necessarily and tacitly attached to every enactment of any sovereign, declaring a particular act unlawful, the idea that the act shall be one committed within the sovereignty of the sovereign making the enactment. Such must be the case here. As the United States could not make it unlawful for a British master to pay seamen on a British ship advance wages in Great Britain, it is only reasonable to intend that the Congressional Act, with this idea in mind, not only may be, but must be read thus: "That it shall be and is hereby made unlawful in any case to pay any seaman wages (anywhere within the territorial jurisdiction of

the United States) in advance of the time," etc. It ought to be manifest, it is respectfully submitted, that the words "in any case" do not mean "in any place" or "anywhere," but do mean "under any set of circumstances that may arise when advance payments are made within the territorial jurisdiction of the United States."

American Banana Co. vs. United Fruit Co., 213 U. S., 347, at 357.

And see United States vs. Freeman, 239 U. S., at 120.

Second: It should be noted that it is not the payment of advance wages, without more, that it is declared shall in no case absolve the vessel, but the payment of "such advance wages," that shall in no case absolve, etc. What does the "such" refer to? Unlawful advancements, of course, and no advancements are such unlawful advancements unless they are made within the territorial jurisdiction of the United States.

It ought not to be necessary to have to say in this court that the determination of matters here brought up from an inferior jurisdiction, must be had upon the record plus such matters as the court may take judicial notice of or have judicial knowledge of. While much that is in the brief of the learned counsel for the seamen as contained from pages 4 to 25 inclusive, is matter of common knowledge or of general history, yet it is respectfully submitted that a great mass of it is matter entirely *dehors* not only the record, but also any permissible idea of common knowledge or history. I do not intend to attempt to follow the gentleman in his disquisition, but I think I may fairly characterize it by drawing attention to certain parts of it that illustrate how far the zeal of advocacy has led counsel

afield. Where, for example, do we get the information, either as a part of contemporary history or matter of such common knowledge as that this court judicially knows it, that the abolition of arrest for desertion is a "thorn in the flesh" of the foreign ship owner; or (still more flagrantly) that once these terrible foreigners get their deserting seamen back in their clutches, they are inflicting heavy sentences on them; or that "to their shame" they are now ("they" referring, of course, to the foreign ship owners) "appealing to the unscrupulous officers of municipal governments to harass the seaman by prosecutions on charges real and imaginary when he has left the ship?"

(Mr. Howard's Brief, p. 13).

I also respectfully commend to the court's attention as subject to the same suggestion, and as being, in addition, rather a fine piece of imaginative writing, the first paragraph on page 15 of the brief of leading counsel for the seamen, in which the suggestion is made that the "Titanic" disaster and similar sea horrors have come from a turning away from the sea of "the high spirited men of the free peoples of the earth."

Little direct aid is given the reaching of a proper determination of this cause by a discussion of such matter, and the purpose of drawing attention to it is to show how the mystery and fascination of the sea seem to becloud the minds of those who undertake to present questions dealing with it, and so make of a brief a fascinating marine romance rather than a dry legal discussion of the issues—or perhaps counsel felt that otherwise, to adopt the language of Pooh-Bah, his story would have been "a bald and unconvincing narrative."

There is no dispute in this case as now presented to this court, over the construction of Section 4 of the present Seamen's Act (the half-wage section), the controversy that was raised over that having been terminated by the decision of the Circuit Court of Appeals for the Fifth Circuit in favor of the construction insisted on by the seamen. The controversy here depends upon the application, to the facts in this case of the eleventh section of the said Act (the advancements section). This section is dealt with in the last three pages of the brief of the leading counsel for the seamen in this case, contained on pages 24-5 of the brief, and there set out is an argument seemingly more formidable than the facts justify, because of an inadvertent omission of, as I see it, vital words from a quotation purporting to set out the Act as it now is. I say an inadvertent omission because I know well personally the learned counsel, and know him to be incapable of a wilful effort to mislead the court.

The argument is this: That subsection (e) of Section 11 of the Seamen's Act (which is the sub-section in which occurs the language making the section applicable to foreign vessels) as contained in the Act passed by the 62nd Congress, but which failed to become law because of failure to receive the President's signature, read thus, as to the matter under discussion:

"That this section shall apply as well to seamen engaged in ports of the United States for service on foreign vessels as to seamen employed on vessels of the United States. * * *."

That this language was an amendment to the language of the sub-section as originally proposed, the sub-section as originally proposed having read:

"That this section shall apply as well to foreign vessels as to vessels of the United States * * *."

And that the present Act has gone back to the original language of the bill as introduced in the 62nd Congress, before the said amendment was made to it. The language of the present Act is thus quoted in capital letters on p. 25 of Mr. Howard's brief (I now quote Mr. Howard's brief) :

"At the next session the 63rd Congress passed the bill in its present form and the President signed it, and it is respectfully submitted that by changing this provision of the bill so as to make it apply 'AS WELL TO FOREIGN VESSELS AS TO VESSELS OF THE UNITED STATES' instead of merely (here is quoted the subsection as it was in the Act passed by the 62nd Congress) the Congress showed beyond a doubt that the purpose of the law was to prohibit the advance to the full extent for which I have contended * * *."

The misquotation that I have drawn attention to consists of the capitalized purported quotation above of the language of the present Seamen's Act. The vital words omitted therefrom, without stars or punctuation mark to indicate omission or break the sense, are the following: "While in waters of the United States." The full quotation, then, is as follows:

"(e) This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States * * *. (My emphasis).

It will thus be seen that the contrast and argument

of my learned friend is deprived of all its force, for not only did Congress not pass the Act in the language contained in the said brief for the seamen, but, as I have heretofore expressly pointed out in this brief and commented on, in express terms made this advancements section applicable to foreign vessels only while in waters of the United states. It is submitted that one may abandon the clear and strong argument of Judge Brown in the State of Maine and the cogently and strongly put argument of Judge Grubb for the Circuit Court of Appeals below in the instant case, and confidently ground the correctness of the holding here sought to be reviewed, upon this express restriction by Congress of the scope of the advancements section of this Act. Such construction of the Act not only does not "fail to give to the clear language of the Act, which is unambiguous, its ordinary meaning" (Mr. Howard's brief, p. 26), but on the contrary, does follow the plain meaning of the words, and I feel quite content to adopt as authorities for this construction, those cited by the learned counsel for the seamen (Mr. Howard) on p. 26 of his brief.

If I be correct in the foregoing, it matters not whether the expressed grounds, on which the learned Circuit Court of Appeals for the Fifth Circuit based its decision, be right or wrong. But, it is earnestly submitted, the learned court's argument is sound. I do not feel that I can add in support thereof anything to what is hereinbefore in this brief contained and the excellent statement in Judge Grubb's opinion for the court, except to reply to the attacks made upon it by the leading counsel and the associate counsel for the seamen in their respective briefs. The leading counsel (Mr. Howard) relies upon **United States vs. Twenty-Five Packages of Panama Hats**, 231 U. S., 358, to sustain his idea that we are wrong in using the criminal portion

of the advancements section, to buttress our argument. It is respectfully submitted that an examination of this case will demonstrate its lack of value for the end sought. The facts were that a consignor of Panama hats "falsely and fraudulently undervalued" them in his invoice at the place of shipment, which was without the United States, and sent them to the Port of New York where they were not entered, but were discharged from the ship and placed, under provisions of law to take care of merchandise brought in but not yet entered, in what is known as a General Order warehouse. They were never entered, nor was there any attempt to enter during a year's time, which was the time allowed by law for goods to remain in such warehouse. The United States then libelled the said goods for breach of an Act which provided, so far as apposite to the case under discussion, as follows:

"That if any consignor * * * * shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, * * * * or shall be guilty of any wilful act or omission by means whereof the United States shall or may be deprived of the lawful duties * * * * such merchandise, or the value thereof to be recovered from such person or persons, shall be forfeited, * * * * and such person or persons shall, upon conviction, be fined—or imprisoned—or both, in the discretion of the court."

Tariff Act of Aug. 5, 1909, c. 6, 36 Stat., 11, 97 (and see quotation therefrom set out on pp. 359-60 of 231 U. S.).

It will be noted that the action was against the *res* itself.

What counsel for the seamen suppose to be the analogy between that case and this one, is that in the Panama Hat case it was argued that the goods could only be forfeited for the same acts that would support an indictment, and that as the consignor could not be prosecuted in the United States for making a false invoice abroad ,the goods could not be forfeited by an action against the goods in the United States. The defect, in the supposed analogy, is this: There, was a conspiracy to defraud the United States by shipping into them dutiable goods with a false statement of their value contained in the invoice so as to reduce the amount of duty to be paid. This whole transaction was indubitably a continuing one from its inception at the making of the false invoice abroad to its attempted consummation by the vessel's discharge of the goods in the United States. While this continuing effort to defraud is still in progress the *res*, which was the instrument of the attempted fraud, comes within the physical jurisdiction of the United States by coming within its territorial limits. The statute authorizes its seizure and forfeiture under such circumstances.

In the instant case, the lawful advancement of wages in Great Britain by a British master of a British vessel to his seamen, is in no possible sense a part of any conspiracy to defraud the United States of anything, or to evade our navigation laws, but, on the contrary, was in the pursuit of the usual and customary practice pursued in the ports of Great Britain, as is expressly shown by the agreed statement of facts, second and third paragraphs, on p. 19 of the record.

Nor was such advance payment in any sense a continuing act. At once upon its making it became a com-

pleted and accomplished thing; begun, done and finished in one transaction and at one place.

Nor is there any such instrumental *res* come within the jurisdiction and subject to seizure as in the **Panama Hat case**. The ship certainly is not.

It would seem, therefore, that the analogy wholly fails. It fails also in another particular. As the learned court below clearly points out, there is nothing whatever morally wrong in advancing a man some portion of his wages before he has earned it. On the other hand, lying for the purpose of defrauding has never yet been condoned by any system of ethics (unless we should accept perhaps that of the Nations with which we are now at war) and is certainly, under our ethical code, *malum in se*.

The associate counsel for the seamen (Mr. Waguespack), addressing himself to the same idea here as Mr. Howard, though expressing it somewhat differently, does not seem to consider the **Panama Hat case** as sufficiently apposite to justify his citation of it, but instead relies on **United States vs. Freeman**, 239 U. S., 117 (erroneously cited in Mr. Waguespack's brief as 229 U. S.)

To this **Freeman** case the same observations hereinbefore just made (except, of course, as to the moral aspect) apply with equal force. It should seem reasonably plain that to "ship or cause to be shipped" a commodity from one place to another, is a continuing transaction, as held in the said case, until the thing shipped reaches its point of destination. In the **Freeman** case was present the same continuity of subject matter, falling under the ban of the statute, from the beginning point outside the jurisdiction to the ending within the jurisdiction—an element of fact completely lacking in the instant case.

The learned counsel apparently appreciates the

difficulty which confronts him here, for he ingeniously attempts to get away from it (p. 9 of Mr. Waguespack's brief) by suggesting this idea: That by the payment of advance wages there was caused to spring into being between the seamen and the master, the relationship of debtor and creditor, and that this relationship was a continuing one when the vessel entered United States waters.

One sufficient answer to this suggestion is contained in the agreed statement of fact on p. 20 of the record, fourth paragraph:

"That the master of the said ship Talus then (that is, at Mobile at the time of the demand that preceded this libel) paid to libellants a sum which, with prior and undisputed credits, and also with said advances at Liverpool, equalled or exceeded as to each libellant, the one-half of the wages thus earned * * * * ."

It thus appears that the libellants had earned, when the ship came into United States waters, more than the amount of the advance. Had this not been the case, the master would have paid them nothing. (See *The Meteor*, 241 Fed., 735). So the status of the seamen as debtors to the ship, had ceased before the vessel came into our waters.

But aside from this, the proposition is bad, anyway. The whole burden of Mr. Howard's brief, and much of Mr. Waguespack's brief, is that what is aimed at and sought to be prevented by the advancements statute, is not the reversal of the creditor-debtor status between the seaman and his employer—not the creation or the destruction, as between seaman and ship, of any status whatever—but the prevention of the evils that come from paying over

(either directly to the crimp or indirectly through the seaman) of a considerable part of the seaman's wages to crimps, sailor boarding house keepers and other evil-disposed persons who prey on the seamen in the ports. If this evil result happened at all, it happened and was over and done with when the ship left Liverpool, and in no sense continued across the water and into the United States.

In his second point (Mr. Waguespack's brief, pp. 10-11) the learned associate counsel for the seamen treats the matter here at issue as though it were a discussion of whether the advancements section should be declared bad *in toto* because containing a criminal provision that is bad, or whether the criminal part should be stricken out of the statute as bad ("unconstitutional" is the word that the gentleman uses) and the balance of the statute remain. But there is no controversy between us whatever upon any such point. I have at no time attacked the statute as unconstitutional in any particular, nor was it so declared by the learned Circuit Court of Appeals for the Fifth Circuit. The idea urged upon and accepted by the learned Circuit Court of Appeals, was that, in construing the statute, one must absolve Congress of any intention to do a vain thing, and that as it was vain for Congress to undertake to punish a matter lawfully done in another sovereignty, we must assume that the legislative subject matter had in mind by Congress was a subject matter within the sovereignty of the United States. In the very *Freeman* case relied on by the gentlemen, this court so express themselves touching Congressional action penalizing things done abroad:

"And yet all will concede that Congress did

not intend to do anything so obviously futile as to denounce as criminal an act wholly done in a foreign country * * * * ."

239 U. S., Opin. at 120.

And this "obvious futility" was one of the potent factors in the construction of the Act there under construction. The Act was Section 240 of the Criminal Code which makes it a punishable offense knowingly to:

" * * * ship or cause to be shipped from one State * * * into another State, * * * or from any foreign country into any State" the prohibited commodities.

See language of Act set out at beginning of the opinion on p. 119 of 239 U. S.

The question for determination was whether the phrase "to ship or cause to be shipped," embraced simply the act of delivery to the carrier; or whether it embraced as well the carriage. What happened was that the defendant delivered in Missouri to a carrier for carriage to and delivery in Kansas, the prohibited stuff (beer). He was indicted in Kansas. If the legislative intention was aimed at simply the delivery for shipment and not at the whole transaction, including the carriage, then the Kansas court had no jurisdiction. On the other hand, if the transaction was a continuing one and included the carriage, part of it was performed in Kansas, and the Kansas court had jurisdiction. In reaching the conclusion stated in the latter branch of the alternative, the court pursued this course of reasoning:

That the Act not only prohibits shipment from one State to another, but shipment from any foreign coun-

try into any State; that it must be that Congress intended the same sort of shipment both as to foreign countries and as to States; that as Congress could not denounce as criminal an act wholly done in a foreign country, it must have intended to denounce a continuing act, or all effect would be denied to that portion of the statute touching shipment from foreign countries; and that therefore a continuing act was intended. Is not this the same sort of reasoning indulged in by the learned Circuit Court of Appeals for the Fifth Circuit?

An excellent expression of the thought that I am imperfectly seeking here to put, is contained in the very interesting opinion of this court in **American Banana Company vs. United Fruit Company**, 213 U. S., 347. There is in that case, a very clear expression of the idea of mutually exclusive sovereignties that I have tried in this brief to emphasize and apply to the instant case, and then this statement of the law touching the construction of a statute, sought to be invoked there, as here, to reach matters done without the territorial jurisdiction of the United States:

"The foregoing consideration would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' (Citing cases). Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator may be subsequently able to catch. In the case of the present statute (the Sherman Act touching monopolies) the im-

probability of the United States attempting to make acts done in Panama and Costa Rica criminal, is obvious. Yet, the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned." (Opin. on p. 357).

The action there was brought by the appellant against the appellee to recover three-fold damages for an alleged monopolistic and complete restraint of trade in Panama and Costa Rica. There we have precisely the line of reasoning that I have attempted to urge here, and that was followed by the learned Circuit Court of Appeals for the Fifth Circuit, and a clear illustration of the fallacy of the argument of the learned District Judge (Ervin) drawn from the use of the words "in any case" in forbidding advancements, and absolving the ship "in no case."

And see *The Windrush*, 250 Fed. 180, at 183.

The third proposition asserted by the learned associate counsel for the seamen (Mr. Waguespack) is this: The learned Circuit Court of Appeals for the Fifth Circuit held that as the making of the advancements at Liverpool involved no moral turpitude, but was *malum prohibitum* only, and was valid in Great Britain, it will be held valid here. This was in response to an insistence by the seamen that the statute, if not directly applicable to the advances here under discussion, yet evidences a general policy against advances, and that consequently our courts should not recognize them. The holding of the learned Court of Appeals is

now attacked in this court and the insistence below reasserted, relying especially on *The Kensington*, 183 U. S., 263 (erroneously cited by counsel as 188 U. S.) That was an action by passengers to recover for baggage destroyed by the carrier's negligence in stowing. The tickets, treated as the contracts of carriage, contained stipulations relieving the carrier of liability for negligence; and also declaring that the contract was Belgian, and should be governed by the Belgian law, which permitted a carrier to stipulate against liability for his negligence. This court held that as it has for many years been the established public policy of this country to hold void all efforts of carriers to stipulate against liability for negligence, and as this contract offended that policy, it could not be enforced in our courts.

But does the instant case fall within that doctrine? What public policy does the British master violate when he lawfully advances money to his crew in Great Britain? To repeat and apply a pregnant sentence from the quotation from *The Kensington*, set out on p. 13 of Mr. Waugnepack's brief:

"The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion."

As the learned Circuit Court of Appeals points out (Rec., p. 31) what is our policy is exhibited solely by this section and its predecessors, which apply only to acts done in our ports. Where, therefore, are we to find the "existence of the rule"; from what deduce it? That the mere existence of the statute is insufficient, is rather strikingly illustrated in the famous case of *The Antelope*, 10 Wheaton, 66; and in *Northern Pacific R. Co. vs. Babcock*, 154 U. S., at 198, this court quotes

approvingly from the Supreme Court of Minnesota, as follows:

"But it by no means follows that, because the statute of one State differs from the law of another State, therefore it would be held contrary to the policy of the laws of the latter State * * *. To justify a court in refusing to enforce a right of action which accrued under the law of another State, because against the policy of our laws, it must appear that it is against good morals or natural justice, or that, for some other such reason, the enforcement of it would be prejudicial to the general interests of our own citizens."

But, the gentleman says, the recognition of advancements abroad would come within the last clause of the quoted matter, in that such recognition would "operate injuriously against the general interest and policy of our citizens." (Brief, p. 12). How? The brief of the seamen's leading counsel teems with praise of our enlightened navigation laws that make American ships, he says, the best ships; for the care, comfort, safety and protection of the seamen; that sail the seas. Not the least of these blessings, say my friends, in substance, is the protection afforded by the prohibition of advancements. If this be true, will not the construction that we urge (if it really will have any appreciable effect, one way or the other, on the American merchant marine, which may be doubted) rather have a beneficial effect on our own shipping than the reverse? Looking with the most kindly eyes on this contention for the seamen, I deny with some confidence the statement on p. 13 of Mr. Waguespack's brief, that it is "manifest" that the construction adopted by the learned Circuit Court of Appeals below would operate injuriously against the interests of our own seamen.

See *The Windrush*, 250 Fed., 180, at 183.

The last suggestion of the learned associate counsel for the seamen is made here for the first time, and is not made by the leading counsel—no doubt for the quite sufficient reason (apparently overlooked by Mr. Wagquespack) that it is expressly foreclosed by the agreed statement of facts, the last paragraph of which (Rec., p 20) reads thus:

"That the amounts found by the District Court to be due and set forth in its decree of May 26th, 1917, are in all cases correct, if said District Court was correct in holding that the said advances at Liverpool should not be deducted from the said one-half wages; if the said District Court erred in said holding, then that the proper decree would have been one dismissing the libel as to all libellants." (My emphasis).

Even if this were not the case, however, the gentleman's position, it is submitted, is untenable and unsupported by authority. The uniform current of authority is that by the general maritime law a seaman who wrongfully and wilfully leaves the ship during the contracted period of service, with the intention not to return, is a deserter, and forfeits his wages, and it is quite immaterial what his motive may be if there be not in fact a legal justification of his action. If he chooses to gamble on his counsel's construction of a statute, it does not lie in his mouth to complain if that construction be against him.

See **Cloutman vs. Tunison**, Fed. Case 2907 (1 Sumner, 373). Decision by Story, J., sitting on Circuit.

The Mary C. Conery, 9 Fed., 222, 223.

The Union, Fed. Case No. 14,347, pp. 537, 539.

And see the very numerous cases in notes 9 to 12, inclusive, to Section 8380 of the Compiled Statutes of 1916. (7 U. S. Compiled Statutes 1916 pp. 8895 to 8900), defining desertion and describing under what circumstances a wilful leaving of the ship's service without the *animus revertendi*, is justifiable. Roughly stated, there must be a dangerous condition of the ship, either as a whole or as to the seamen's quarters; or a failure to furnish food fit to eat, or a deviation from the contracted voyage and an undertaking of a voyage not contracted for.

In conclusion, it is submitted that whether we view this statute and its construction solely in the light of the language used, expressly confining it in its application to foreign vessels "while in waters of the United States"; or construe it with the aid of the reasoning derived from the penalty provision and the clearance provision and the general, fundamental doctrine of the law of Nations, with reference to national sovereignty; in either event we are irresistibly drawn to the conclusion that the construction of the statute by the learned Circuit Court of Appeals for the Fifth Circuit, is correct and should be here affirmed.

One final thought: Here are contracts of shipment lawfully made between persons who are not our citizens, made within the territorial jurisdiction of a nation that is not only friendly in the legal sense, but is actually now engaged with us as a brother in arms in a titanic struggle with the forces of anti-civilization, and made with reference to service upon a ship which is a part of the merchant marine of that nation —the nation whose warships are performing right now

so important and valuable a part in the marvelously successful sea transport of our troops to French soil. As a part of those contracts of shipment, advances were made which were not forbidden by the laws of Great Britain, but were valid where they were made—in Liverpool. There is nothing whatever inherently wrong or immoral in the payment of such advancements. And yet this court is asked to tear down and in part destroy or deny validity to these contracts lawfully made and acts lawfully done, where made and done, by persons *sui juris* and beyond the territorial jurisdiction of the United States. Leaving aside the question of the competency of Congress to validly denounce such contracts and actions and assuming for the moment that the Congress might do so; and leaving aside the cogent reasons for thinking that Congress did not attempt to do so, that I have heretofore in this brief tried to express; there is still this additional reason impelling toward the construction urged upon and taken by the learned Circuit Court of Appeals for the Fifth Circuit: Liberty of contract—the right to contract as one will so long as there is not an infraction of public morals, public policy, public health or express statute—is one of the valued liberties of mankind, and a very important part of the ordinary, daily administration of municipal law is taken up with the enforcement of rights growing out of the notion of the sanctity of contracts. Should there be any doubt as to construction, must not that doubt be resolved in favor of upholding the contract?

Respectfully submitted,

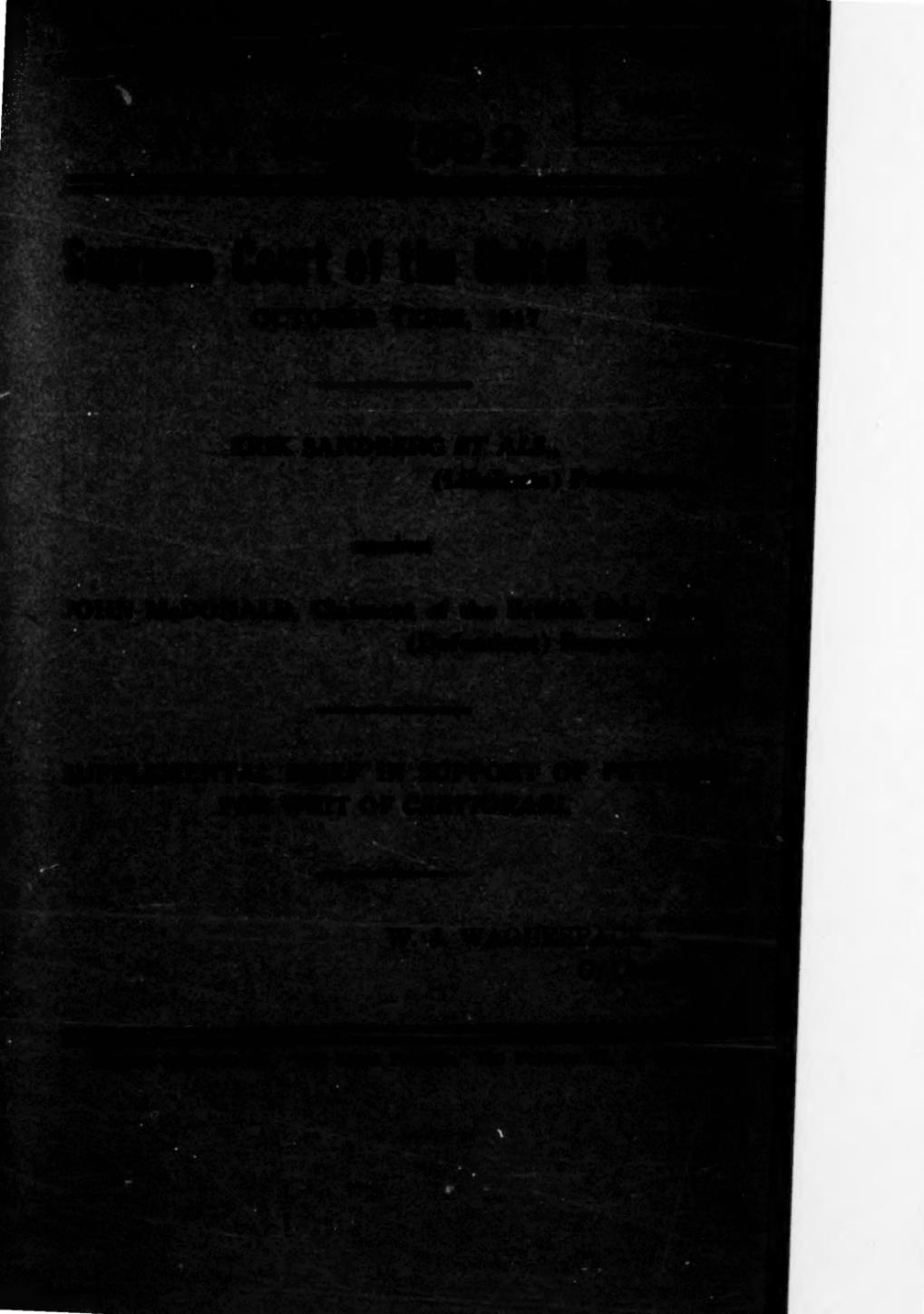
PALMER PILLANS,

Proctor for the "Talus"

I acknowledge service of the foregoing brief this
October 3rd, 1918

(Sgd.) : ALEX T. HOWARD,
Proctor of Record for Petitioners





Supreme Court of the United States

OCTOBER TERM, 1917

ERIK SANDBERG ET ALS.,

(Libelants) Petitioners,

against

JOHN McDONALD, Claimant of the British Ship *Talus*,
(Defendant) Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

SIRS:

PLEASE TAKE NOTICE that the annexed supplemental brief in support of the application for a writ of *certiorari* to the United States Circuit Court of Appeals for the Fifth Circuit, will be submitted to the Supreme Court of the United States at the opening of the court on the 25. day of March, 1918, or as soon thereafter as counsel can be heard.

Dated, March 24., 1918.

W. J. WAGUESPACK,
Of Counsel.

To

JOSEPH N. McALEER,

J. H. KIRKPATRICK,

PALMER PILLANS,

Proctors for Defendants,

Mobile, Alabama.

M. V. HANAW,

Proctor for Defendants,

Mobile, Alabama.

Supreme Court of the United States

OCTOBER TERM, 1917

ERIK SANDBERG ET ALS.,

(Libelants) Petitioners,

against

JOHN McDONALD, Claimant of the British Ship *Talus*,

(Defendant) Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

We think the record presents a case which warrants the granting of a writ of *certiorari* for the following reasons:

FIRST. Because the construction placed by the Court of Appeals upon Section 11 of the Seamen's Act of 1916, as to payments of wages in advance by foreign ships to foreign seamen in foreign ports, as applied to such foreign ships when they enter the ports of the United States, involves in effect the constitutionality of the statute, in that,

in order to reach the decision which was rendered in this case, the Court of Appeals eliminated such advances from the operation of the statute, as not being within the intent of Congress, upon the ground that the statute would otherwise be of doubtful constitutionality.

SECOND. Because, apart from the constitutional question involved, which we think would be sufficient to warrant the granting of the writ, the Court erred, we think, in its construction of the statute for the following reasons:

In that the Court holds that the statute cannot be construed to apply to advances made to foreign seamen who shipped in foreign ports, whenever said ships have entered upon the waters of the United States, because the imposition of a criminal penalty for the making of such advances upon foreign soil, which is beyond legislative power, would make a construction of the statute as applicable to such advances of doubtful constitutionality, whereas, we think, the construction of the statute by the inclusion of such advances is not only within the intent of the statute, but is, under the rule of construction enunciated in *United States vs. Freeman*, 229 U. S. 117, within legislative authority.

FIRST POINT.

The constitutional question suggested by the Court of Appeals in its construction of the statute, was not raised by the pleadings, was not passed upon by the District Court, and, therefore, could not be brought up to this Court by appeal.

But, the constitutional doubt in the minds of the Court, the doubt as to whether Congress had the power to impose a penalty upon the master of foreign vessels after the vessels had entered the ports of the United States, for payments of advance wages in foreign ports, is the basis upon which the statute was construed against the intent to include such advances. The case, therefore, presents the aspect of a final decision of a Court of Appeals in which a constitutional point forms the basis upon which the statute had been construed and in which a part of the statute has been eliminated on the ground that it is doubtful whether Congress had the power to include it. In other words, while this Court is vested with **exclusive** appellate jurisdiction over constitutional questions, a very important constitutional question in which all the shipping interest of the world is concerned forms here, in effect, the basis of a final decision of a Court of Appeals. We think, therefore, that upon that ground, a writ of *certiorari* to review this final decision, should be granted as being essentially within the reasons for which Congress vested this Court with the power and discretion to issue such writs, apart from the fact that it is so important that there should be uniformity of construction of all the statutes of the United States and especially of this statute, which is new and which has never been construed before.

SECOND POINT.

The intent that Section 11 should apply to foreign vessels when they enter into the ports of the United States is manifest, for the statute provides that any master or owner of a foreign vessel who has violated its provisions, shall be liable to the penalty.

6

The statute reads:

SEC. 11. (a) "That it shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, etc. * * * Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine, etc. * * * The payment of such advanced wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel suit or action for the recovery of such wages.

(e) "That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of any vessel of the United States would be for similar violation."

It is certain that Congress did not attempt to denounce as criminal an **act** wholly done in a foreign country such as would be the **act of paying** advance wages. The statute, therefore, must be given such a construction as will accomplish the purpose of its enactment. But the purpose which Congress had in view was evidently to prohibit the entry into the ports of the United States of vessels with seamen who, having been paid advance wages, stood in a state of continuous involuntary servitude, to the end that discrimination against American seamen and American shipowners, who are bound by the provisions of the law against the payment of advance wages, might be avoided. What Congress wished to do was to subject the foreign master and the foreign seamen, as soon as the vessel came within the jurisdiction

tion of the United States, to the same laws to which the American masters and the American seamen were subjected. It is, therefore, evident that the purpose of the clause as to foreign vessels was not to prohibit **the act itself** of **paying** advance wages upon foreign soil, but, to prohibit the **entry** of vessels into our ports with seamen affected, tainted, with the **continuous** condition of involuntary servitude which was established by these payments and which **entered with them into our ports** when they came into competition with American seamen.

That was the evil to be remedied; but, this Court has said that:

"A guide to the meaning of a statute is found in the evil which it is designed to remedy, as gathered from contemporaneous events."

Trinity Church vs. United States 143 U. S. 457.

The construction placed upon the statute by the Court of Appeals, it is manifest, would defeat the purpose of its enactment and would open the doors to the evil which it was designed to remedy, while the construction for which we contend would accomplish the purpose of its enactment.

And such a construction is clearly within legislative powers under the rule adopted by this Court in the case of *United States vs. Freeman*, 229 U. S. 117.

In that case, which was an indictment under Section 240 of the Criminal Code, making it a punishable offense knowingly

"to ship or cause to be shipped from one State
* * * or from any foreign country into any State
* * * " any package of or containing intoxicating liquor of any kind, "unless such package be so labeled on the outside cover as to plainly show the name of the consignee," etc., * * *

although the word "**shipped**" was used in the statute, the Court read "**shipped**" as a **continuous** act whereby the transportation into a State is accomplished, and said:

"So, if its words permit, as we think they do, the statute must be given a construction which will cause it to reach both classes of shipments and thereby to accomplish the purpose of its enactment. (*United States vs. Chavez*, 228 U. S. 525, 33 S. C. Rep. 599.) This, we think, requires that it be construed as referring to the continuing act before indicated whereby the transportation into a State is accomplished, whether the package comes from another State or from a foreign country. In this view the completion of the offense will always be within a jurisdiction where the statute can be enforced."

Applying that rule of construction to this case we think that the clause of the statute which imposes a criminal penalty upon the master of the vessel, who has violated its provision by entering the waters of the United States while the relation of debtor and creditor established by the payment of advance wages on foreign soil **continues to exist**, is within the scope of legislative authority.

The reprobated criminal penalty clause of the statute being the heart of the brilliant and masterly argument of the Court of Appeals, if your Honors should take our view, it is patent that the whole argument must fall.

We respectfully submit, therefore, that for the reasons herein stated, and because there has been as yet no authoritative, no universally authoritative, construction of this act, which is a new act, the writ should be granted.

Respectfully submitted,

W. J. WAGUESPACK,
1406 Whitney Central Bank,
New Orleans, La.

SANDBERG ET AL. v. McDONALD, CLAIMANT
OF THE BRITISH SHIP "TALUS."

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

No. 392. Argued November 5, 1918.—Decided December 23, 1918.

Section 11 of the Seaman's Act of 1915, c. 153, 38 Stat. 1164, prohibits, under criminal penalties, the payment of wages in advance to any seaman; provides that in no case shall such advancements absolve vessel, master or owner from full payment of wages when actually earned, or be a defense to a libel or action for their recovery; applies "as well to foreign vessels while in waters of the United States, as to vessels of the United States;" makes the master, owner, consignee, or agent of any foreign vessel who violates its provisions liable to the same penalty as if the vessel were domestic; and, requiring exhibition of shipping articles, denies clearance from our ports to any vessel of either class, unless the provisions of the section have been complied with. *Held*, not to apply to advancements made to alien seamen shipping abroad on a foreign vessel, pursuant to contracts valid under the foreign law; and that such advancements may be allowed for in paying such seamen in a port of the United States. P. 195.

A provision in this act for the abrogation of inconsistent treaty provisions is not opposed to the above construction, since it may properly be referred to other parts of the act abolishing arrest for desertion and conferring jurisdiction on our courts over wage controversies arising in our jurisdiction. P. 196.

The construction here adopted is the same as that adopted by the State Department in consular instructions; and the reports and

Argument for Petitioners.

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proceedings attending the legislation in Congress, so far as they may be considered, do not require a different conclusion. P. 197.
248 Fed. Rep. 670, affirmed.

THE case is stated in the opinion.

Mr. Alex. T. Howard for petitioners:

It was the broad purpose of Congress to grant to the seaman personal liberty and to prohibit as to all vessels that came within our jurisdiction the evil of paying the seaman his wages in advance and thereby to promote the welfare of the American merchant marine and the American seaman by an equalization of wages.

The language of the act is broad enough to cover such an advance, and even if this were not the case the payment of such an advance ought not to be upheld by an American court, when it is passing upon the civil rights of the parties with the *res* before it, because so clearly opposed to our public policy. Senate Doc. No. 228, 65th Cong., 2d sess.; 41st Ann. Report, Legal Aid Society.

The legislative history of the act shows that its purpose was to equalize wages. Report No. 645, 62d Cong., 2d sess., p. 7; *id.* pt. 2, pp. 2, 3, 5; Report No. 852, 63d Cong., 2d sess., pp. 19, 20.

By changing § 11 of the bill so as to make it apply "as well to foreign vessels as to vessels of the United States" instead of merely "to seamen engaged in ports of the United States for service on foreign vessels," Congress showed its purpose to prohibit advances to the full extent and thereby to equalize wages and to make possible the enforcement of the other humane provisions of the act.

The language is unambiguous and should be given its ordinary meaning. It was erroneous to limit the construction of the section by constraining the civil to the same field as the criminal provisions. *United States v. Twenty-five Packages of Hats*, 231 U. S. 358.

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Argument for Petitioners.

Mr. W. J. Waggespack for petitioners:

The penalty provision of the statute under the rule of construction in *United States v. Freeman*, 239 U. S. 117, is within the scope of legislative authority. The intent that § 11 should apply to foreign vessels when they enter into the ports of the United States to load and unload cargo, and while they remain in the waters of the United States, is manifest, for the statute provides that any master or owner of a foreign vessel who *has* violated this provision shall be liable for the penalty.

It is obvious that § 11 forms part of the general plan which Congress has mapped out to elevate and better the condition of American seamen, to secure a higher standard of service, and to benefit the American merchant marine by equalizing the costs of operation between our ships and those of other nations, for, as said by this court in *The Eudora*, 190 U. S. 169, "no one can doubt that the best interests of seamen as a class are preserved by such legislation."

The immediate purpose which Congress had in view in adopting this criminal provision was evidently to prohibit the entry into the ports of the United States of vessels with seamen who were victims of "crimps," as they are called, and who, having been paid advance wages, stood in a state of continuous involuntary servitude, to the end that discrimination against American seamen, and American shipowners, might be avoided.

The penalty provision of the statute and the civil provision are separable and it is obvious that Congress would have enacted the legislation with the penalty provision eliminated. *McCullough v. Virginia*, 172 U. S. 102; *Railroad Co. v. Schutte*, 103 U. S. 118; *James v. Bowman*, 190 U. S. 127; *Chesapeake & Ohio Ry. Co. v. Kentucky*, 179 U. S. 388; *New York v. Miln*, 11 Pet. 102.

Assuming that no special policy against the making of advances against foreign seamen in a foreign port can be

Argument for Respondent.

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deduced from § 11, still a public policy against making such advances everywhere can be deduced from the fact that it would operate injuriously against the general interest and policy of our own citizens. *Bank v. Owens*, 2 Pet. 527-538; *Woodward v. Roane*, 23 Arkansas, 523; *Marshall v. Sherman*, 148 N. Y. 9; *Hill v. Spear*, 50 N. H. 253; *The Kensington*, 183 U. S. 263.

The court erred in concluding that libelants were deserters, and in decreeing their wages forfeited.

Mr. Palmer Pillans, with whom Mr. J. N. McAleer was on the brief, for the ship, reviewed the prior legislation, and held that, so far as the matter in question was concerned, no new purpose was evinced by the present act. The section, as in previous laws, applied only to advancements made in our own waters. It should be taken with the old construction. They cited and discussed the following: *The State of Maine*, 22 Fed. Rep. 734; *The Windrush*, 250 Fed. Rep. 180; *The Elswick Tower*, 241 Fed. Rep. 706, 710; *Patterson v. Bark Eudora*, 190 U. S. 169, 178, 179; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 357; *United States v. Freeman*, 239 U. S. 117, 120; *Kenney v. Blake*, 125 Fed. Rep. 672; *The Alnwick*, 132 Fed. Rep. 117; *The Neck*, 138 Fed. Rep. 144, 146; *The Bound Brook*, 146 Fed. Rep. 160, 162; *The Kestor*, 110 Fed. Rep. 432, 434, 438, 441, 442, 444; *The Troop*, 117 Fed. Rep. 557, 560; *The Meteor*, 241 Fed. Rep. 735; *The London*, 241 Fed. Rep. 863; affirming 238 Fed. Rep. 645; *The Antelope*, 10 Wheat. 66; *Northern Pacific Ry. Co. v. Babcock*, 154 U. S. 198.

There is necessarily and tacitly attached to every enactment declaring a particular act unlawful the idea that the act shall be one committed within the sovereignty of the sovereign making the enactment. Such must be the case here. As the United States could not make it unlawful for a British master to pay seamen on a British

185. Argument of United States as *amicus curiae*.

ship advance wages in Great Britain it is only reasonable to intend that the act, with this idea in mind, not only may be, but must be read thus: "That it shall be and is hereby made unlawful in any case to pay any seaman wages (anywhere within the territorial jurisdiction of the United States) in advance of the time," etc. It ought to be manifest, that the words "in any case" do not mean "in any place" or "anywhere," but do mean "under any set of circumstances that may arise when advance payments are made within the territorial jurisdiction of the United States." *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 357. And see *United States v. Freeman*, 239 U. S. 117, 120.

It should be noted that it is not the payment of advance wages, without more, that it is declared shall in no case absolve the vessel, but the payment of "such advance wages," that shall in no case absolve, etc. What does the "such" refer to? Unlawful advancements, of course, and no advancements are such unlawful advancements unless they are made within the territorial jurisdiction of the United States.

Mr. Assistant Attorney General Brown, with whom *Mr. Robert Szold* was on the brief, for the United States as *amicus curiae*:

The evil sought to be remedied was the handicap of higher wage cost under which the then decadent American merchant marine was laboring. President's Message of December 7, 1903; Report of Merchant Marine Commission, January 4, 1905 (39 Cong. Rec., pt. 1, pp. 437-439; Senate Report No. 2755, 58th Cong., 3d sess.); Annual Report, Commissioner of Navigation, 1915, p. 159; Act of June 26, 1884, c. 121, 23 Stat. 53, § 20.

The legislative purpose to equalize the wage cost of foreign and domestic vessels leaving our ports was accomplished by limiting the enforcement of foreign contracts.

The deliberate intent to cover contracts made abroad is shown by the committee reports and legislative history. House Report No. 645, 62d Cong., 2d sess.; House Report No. 852, 63d Cong., 2d sess.; H. R. 23673, 62d Cong., 2d sess., 48 Cong. Rec., pp. 5242, 9259, 9429, 9431, 9432, 9434, 9435, 9502, 9503; Report Commissioner of Navigation, 1906, pp. 64, 92; 49 Cong. Rec., pt. 5, pp. 4567, 4588, 4806, 4854; 50 Cong. Rec. 5749; 52 Cong. Rec. 4646.

A reading of the act as a whole also shows this intent.

Section 4 is valid as a condition upon the entry of foreign vessels into American ports. The power to impose such conditions is an incident to the sovereignty of the nation. Vattel, Law of Nations (Chitty, ed. 1863), p. 40; *Patterson v. Bark Eudora*, 190 U. S. 169; *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; *Buttfield v. Stranahan*, 192 U. S. 470, 492, 493; *Weber v. Freed*, 239 U. S. 325, 329; *Turner v. Williams*, 194 U. S. 279, 289.

It seems clear in this case that Congress was seeking to impose the wage requirement as a condition to the entry of foreign vessels. *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; *Patterson v. Bark Eudora*, 190 U. S. 169.

The statute declares a rule of policy of the forum forbidding the enforcement of such contracts. *The Kensington*, 183 U. S. 263; *Fonseca v. Cunard S. S. Co.*, 153 Massachusetts, 553.

There is no question of the validity with respect to contracts executed between foreign seamen and foreign masters within the United States.

MR. JUSTICE DAY delivered the opinion of the court.

This case brings before us for consideration certain features of the so-called "Seaman's Act." (38 Stat. 1164.) The act is entitled: "An Act To promote the welfare of American seamen in the merchant marine of

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the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea." It contains numerous provisions intended to secure better treatment of seamen, and to secure for them better conditions of service.

The libel charges a demand in Mobile, Alabama, for one-half part of the wages then earned by the seamen, and the refusal of the master to pay the amount which the libelants claimed to be due. The master paid each of them what he conceived to be due, deducting certain advances made to the men at Liverpool, England, where the seamen were signed.

The facts are:

The "Talus" is a British ship and the libelants and petitioners citizens or subjects of nations other than the United States and at the time of employment by the ship and before boarding her they received certain advances at Liverpool by the ship or its agents, a practice usual and customary and not forbidden by the laws of Great Britain. The advance did not, as to any libelant, exceed the amount of a month's wages.

The libelants boarded the ship at Dublin, Ireland, December 1, 1916, and remained in her service until they left her at Mobile, Alabama.

The ship arrived in American waters on February 11, 1917, off Fort Morgan, from whence she proceeded immediately to Mobile, where she remained until after February 24, and unloaded and loaded cargoes. During the voyage and at Mobile prior to February 22, libelants received certain payments from the ship in cash and in articles purchased from it.

On February 22 libelants demanded of the master of the ship payment of one-half of the wages earned by them to that date. The master then paid to them a sum which, with the cash paid them and the price of the articles

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purchased as stated above, together with the advances made in Liverpool, equaled or exceeded the one-half of the wages then earned by each of them from the commencement of his service for the ship. It was less, however, than such one-half wages if the advances at Liverpool had not been included in the credits. The master claimed that those advances should be deducted from the one-half wages, and did deduct them, and the sum or sums paid by the master to the libelants exceeded the amount of wages earned by them for the eleven days the ship had been in American waters. The libelants quit the ship February 24, 1917, and were logged as deserters on the same day.

Under the foregoing statement of facts the question for decision is: Was the master entitled to make deduction from the seamen's pay in the amount of the advancements made at Liverpool? The District Court held that these advancements could not be deducted. 242 Fed. Rep. 954. The Circuit Court of Appeals reached the opposite conclusion. 248 Fed. Rep. 670. The pertinent section of the act for consideration reads:

"SEC. 10 (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the

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owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

* * * * *

"“(e) That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"“The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.””

The genesis and history of this legislation are found in U. S. Compiled Statutes, 1916, vol. 7, § 8323, annotated.

The Dingley Act of 1884 (23 Stat. 55, 56), which is the origin of this section, contains terms much like those found in this act. That statute, as the present one, in the aspect now before us, was intended to prevent the evils arising from advanced payments to seamen, and to protect them against a class of persons who took advantage of their necessities and through whom vessels were obliged to provide themselves with seamen. These persons obtained assignments of the advanced wages of sailors. In many instances this was accomplished with

little or no service to the men who were obliged to obtain employment through such agencies. In the Dingley Act it was made unlawful to pay seamen's wages before leaving the port at which he was engaged. In the present act it is made unlawful to pay seamen's wages in advance of the time when he has actually earned the same. The Act of 1884 by its terms applied as well to foreign vessels as to the vessels of the United States, and masters of foreign vessels violating the law were refused clearance from any port of the United States. The present statute is made to apply as well to foreign vessels while in the waters of the United States as to vessels of the United States.

In the present statute, in the section from which we have just quoted, masters, owners, consignees, or owners of foreign vessels are made liable to the same penalties as are the like persons in case of vessels of the United States. Such persons in case the vessels are those of the United States or foreign vessels, seeking clearance in ports of the United States, are required to present their shipping articles at the office of clearance, and no clearance is permitted unless the provisions of the statute are complied with.

The Act of 1884 came before the United States District Court for the Southern District of New York in the case of *The State of Maine*, 22 Fed. Rep. 734. In a clear and well-reasoned opinion by Judge Addison Brown the law was held not to apply to the shipment of seamen on American vessels in foreign ports. After some amendments in 1898, not important to consider in this connection, the matter came before this court in the case of *Patterson v. Bark Eudora*, 190 U. S. 169, and it was held to apply to a British vessel shipping seamen at an American port, and, furthermore, that the act, as thus applied to a foreign vessel in United States waters, was constitutional.

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While the Seaman's Act of 1915 contains many provisions for the amelioration of conditions as to employment and care of seamen, in the aspect now involved we have called attention to the state of legislation and judicial decision when that act was passed. Did Congress intend to make invalid the contracts of foreign seamen so far as advance payment of wages is concerned, when the contract and payment were made in a foreign country where the law sanctioned such contract and payment? Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States. The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels "while in waters of the United States."

Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *American Banana Co. v. United Fruit Co.* 213 U. S. 347, 357. In *Patterson v. Bark Eudora, supra*, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that

there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress. *United States v. Freeman*, 239 U. S. 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States.

It is true the act provides for the abrogation of inconsistent treaty provisions, but this provision has ample application treating the statute to mean what we have here held to be its proper construction. It abolishes the right of arrest for desertion. It gives to the civil courts of the United States jurisdiction over wage controversies arising within our jurisdiction. These considerations amply account for the treaty provision. See Treaties in Force, ed. 1904, index, p. 960.

It is said that the advances in foreign ports are against the policy of the United States and, therefore, not to be

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sanctioned here. As we have construed this section of the statute, no such policy as to foreign contracts legal where made, is declared.

We have examined the references in the briefs of counsel to the reports and proceedings in Congress during the progress of this legislation so far as the same may have weight in determining the construction of this section of the act. We find nothing in them, so far as entitled to consideration, which requires a different meaning to be given the statute. We may add that the construction now given has the sanction of the Executive Department as shown in Instructions to Consular Officers, promulgated through the medium of the State Department.

We are of opinion that the Circuit Court of Appeals reached the right conclusion as to the meaning and interpretation of this section of the act, and its judgment is

Affirmed.

MR. JUSTICE MCKENNA, with whom concur **MR. JUSTICE HOLMES, MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE**, dissenting.

This is a libel in admiralty under the Seamen's Act of 1915 (38 Stat. 1164-1168), especially involving § 11.

The libel was filed by petitioners here and others. It was dismissed as to the latter and they have acquiesced in the judgment. The facts are set out in the opinion of the court.

With this case were submitted others that present the act of Congress in different aspects. Among these was No. 361 [*Dillon v. Strathearn S. S. Co., ante*, 182]. It was a libel by a seaman who had shipped on a British vessel and was based on a demand for wages not due at the time of the demand under the terms of the shipping articles signed by him. Section 4 of the act, *infra*, was especially involved in consideration and its constitu-

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tionality was attacked by the ship. The Circuit Court of Appeals for the Fifth Circuit, to which the case had gone, presented the question to this court in two aspects, first generally, and, second, more particularly that provision which makes the section "apply to seamen on foreign vessels while in harbors of the United States."

In the present case the ship is also British and the libelants and petitioners citizens or subjects of nations other than the United States, and the controversy is as to the right of the master to deduct from the wages, of which the law authorizes the demand, advances made to the seamen in Liverpool, England. To make such advances was a practice usual and customary and not forbidden by English law. It would seem, therefore, that the constitutional question is as much involved in one case as in the other. But under the court's construction of the act that question can be pretermitted. Under our construction it would seem to be not only of ultimate but of first insistence. The court, however, is of opinion that the question of the constitutionality of the act was not certified in such manner as to be subject to its consideration. From that conclusion we are not disposed to dissent and shall assume, as the court does, that the legislation is valid and pass to its consideration.

The instant case, the facts not being in dispute, is brought to the question of the right of the master to deduct the Liverpool advances, the ship asserting the right and the libelants denying it. The solution of the question necessarily depends upon the construction of the act, or, more precisely, its application. It is conceded, yielding to the authority of *Patterson v. Bark Euora*, 190 U. S. 169, that the act applies to American seamen shipping in an American port upon foreign vessels, but it is contended from that case and other cases that it ought "to seem plain on principle and authority that the advancements statute has no effect except upon advancements

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made to seamen within the territorial jurisdiction of the United States." And, indeed, it is insisted that Congress "*ex industria* in terms confined the application to the waters of the United States." The conclusions are deduced from the cases which are reviewed and the language of the act is quoted. We give the quotation as it amplifies the contentions:

"That this section shall apply as well to foreign vessels *while in waters of the United States* [counsel's emphasis], as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

The quotation is but a part of § 11.¹ It is preceded by

¹ Section 11 was an amendment of § 24 of the Act of December 21, 1898, and § 24 was an amendment of § 10 of the laws of 1884 as amended in 1886, and, as it now stands as far as pertinent, is as follows:

"Sec. 10 (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense

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the explicit declaration that it is "unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages." There is no limitation of place or circumstances and the universality of the declaration is given emphasis and any implication of exception is precluded with tautological care by the provision that "the payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages." To qualify these provisions or not to take them for what they say, would, in our opinion, ascribe to the act an unusual improvidence of expression. And § 4 should be considered in connection. It is hence important that we give it in full. And it may be said that it is an amendment to § 4530, Rev. Stats. It is as follows:

"Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive and demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and

to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500."

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he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: . . . *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.”

This section and the others we have quoted express something more than particular relations of ship and seaman; they express the policy of the United States which no private conventions, no matter where their locality of execution, can be adduced to contravene. *The Kensington*, 183 U. S. 263; *United States v. Chavez*, 228 U. S. 525; *United States v. Freeman*, 239 U. S. 117. Nor are we called upon to assign the genesis of the policy or trace the evolution of its remedy to the act in controversy; and besides it has been done elsewhere. It is enough to say that the act itself demonstrates that it is intended as a means in the development of the merchant marine and it hardly needs to be added, to quote counsel for the Government, “that the welfare of the seaman is remarkably interrelated with that of the merchant marine.” This certainly was the conception of Congress and answers the contentions based on contrary opinion and deductions. It is manifest also from the title of the act, which declares its purpose to be “To promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea.” Its efficacy as a means or the policy of the means is not submitted to our judgment. Ours is the simple service of interpretation, and there is no reason to hesitate in its exercise because of supposed consequences. The policy

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of the act was so insistent that Congress did not hesitate to abrogate opposing treaties. Certainly, therefore, we cannot give a controlling force to the suggestion that to construe the act as the ship construes it and others, supporting the ship, construe it, is to "impose our conception of the rights of seamen upon the whole world in violation of the comity of nations." The reply is immediate: It was for Congress to estimate this and other results and to consider how far they were counterpoised or overcome by other considerations. If the section was ambiguous the asserted results might be invoked to resolve its meaning; but we do not think it is ambiguous.

It must be conceded, indeed, it is conceded, that the words of the sections are grammatically broad enough to include all seamen, foreign as well as American, and advances and contracts, wherever made, and to the contention that Congress had in mind and was only solicitous for American seamen, the answer is again immediate: The contention would take us from the certainty of language to the uncertainties of construction dependent upon the conjecture of consequences; take us from the deck to the sea, if we may use a metaphor suggested by our subject. Language is the safer guide, for it may be defined; consequences brought forward to modify its meaning may be in fact and effect disputed—foreseen, it may be, and accepted as necessary to the achievement of the purpose of the law. And the purpose is resolute, has been maintained for many years with increasing care, and the ship, being in the waters of the United States, not the nationality of the seamen, selected as its test. And lest there might be impediment in treaties, they are declared, so far as they impede, to be abrogated.

But authority may be adduced against the contentions. In *Patterson v. Bark Eudora*, *supra*, the Seamen's Act came under consideration, and it was contended, as it is contended now, that the title determined against the body

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of the act and that therefore the act did not apply to foreign vessels notwithstanding its explicit words. The contention was declared untenable and the reasoning of the court exhausts discussion on that and the other contentions as to the purpose and power of Congress. Of the first it was said that it was to protect sailors against certain wrongs practiced upon them, one of the most common being the advancement of wages; of the second it was said, quoting Chief Justice Marshall: "The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself." *The Exchange*, 7 Cranch, 116. The nationality of the seamen does not appear, but the vessel was foreign, and the application of the statute to the latter constituted the ground of controversy.

Of course, the language of an act, though universal, may find limitation in the jurisdiction of the legislature; but certainly a ship within the harbors of the United States is within the jurisdiction of the United States, and making its exercise "apply to seamen on foreign vessels," and "the courts of the United States . . . open to such seamen for its enforcement" was the judgment of Congress of the way to promote its purpose.

These considerations, we think, answer as well other contentions, that is, that the act "should be construed as applicable only to seamen shipped in an American port on vessels which remain for a time in or afterwards return to an American port to load or deliver cargo" or "to seamen of American nationality upon foreign or domestic vessels, irrespective of the port of shipment."

It is enough to say of the contentions, in addition to what has been said, that they impose on the statute qualifications and limitations precluded by its words and the purposes they express. There is a great deal said, and ably said, upon these contentions and the more pretentious one that the act would violate the Constitution of the

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United States unless so "construed as not to apply to foreign seamen shipped on a foreign vessel in a foreign port, under a contract, valid where made"

We cannot concede the qualification nor doubt the power of Congress to impose conditions upon foreign vessels entering or remaining in the harbors of the United States. And we think that the case of *The Eudora* declares the grounds of decision. Its principle is broader than its instance and makes the vessel and its locality in the waters of the United States the test of the application of the act and not the nationality of the seamen nor their place of shipment, nor contravening conventions, and precludes deductions of advances.

Nor is there obstacle in the penal provisions of the act. They may be distributively applied and such application has many examples in legislation. It is justified by the rule of *reddendo singula singulis*. By it words and provisions are referred to their appropriate objects, resolving confusion and accomplishing the intent of the law against, it may be, a strict grammatical construction. *United States v. Simms*, 1 Cranch, 252; *Commonwealth v. Barber*, 143 Massachusetts, 560; *Quinn v. Lowell Electric Light Corp.*, 140 Massachusetts, 106. The Seamen's Act especially invokes the application of the rule. The act applies to foreign vessels as explicitly and as circumstantially as it does to domestic vessels. Let the foreign vessel be in the waters of the United States and every provision of the act applies to it as far as it can apply. In other words, it gives the right to a seaman on a foreign vessel to demand from the master one-half part of the wages which he shall have earned at every port and makes void all stipulations to the contrary. And the remedy of the seaman in such case is made explicit. If his demand be refused ("failure on the part of the master to comply" are the words of the act) the seaman is released from his contract and he is entitled to the full payment of wages earned. And he is

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given a remedy in the courts of the United States. The defense of an advance payment is precluded and clearance of the foreign vessel is forbidden. And thus the act has completeness of right and remedy and, we think, precludes judicial limitation of either. Its provisions are simple and direct, there is no confusion in their command, no difficulty in their obedience. Of course, a "master, owner, consignee, or agent of" any foreign vessel, to quote the words of the act again, cannot violate any provision of it if he be not in the United States. If there be provisions that cannot reach him, that with which this case is concerned can reach him.

We are, therefore, of opinion that the District Court was right in refusing to allow the Liverpool advances and the Circuit Court of Appeals was wrong in reversing the ruling.

(26,403)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 936.

PAUL NEILSON ET AL., PETITIONERS,

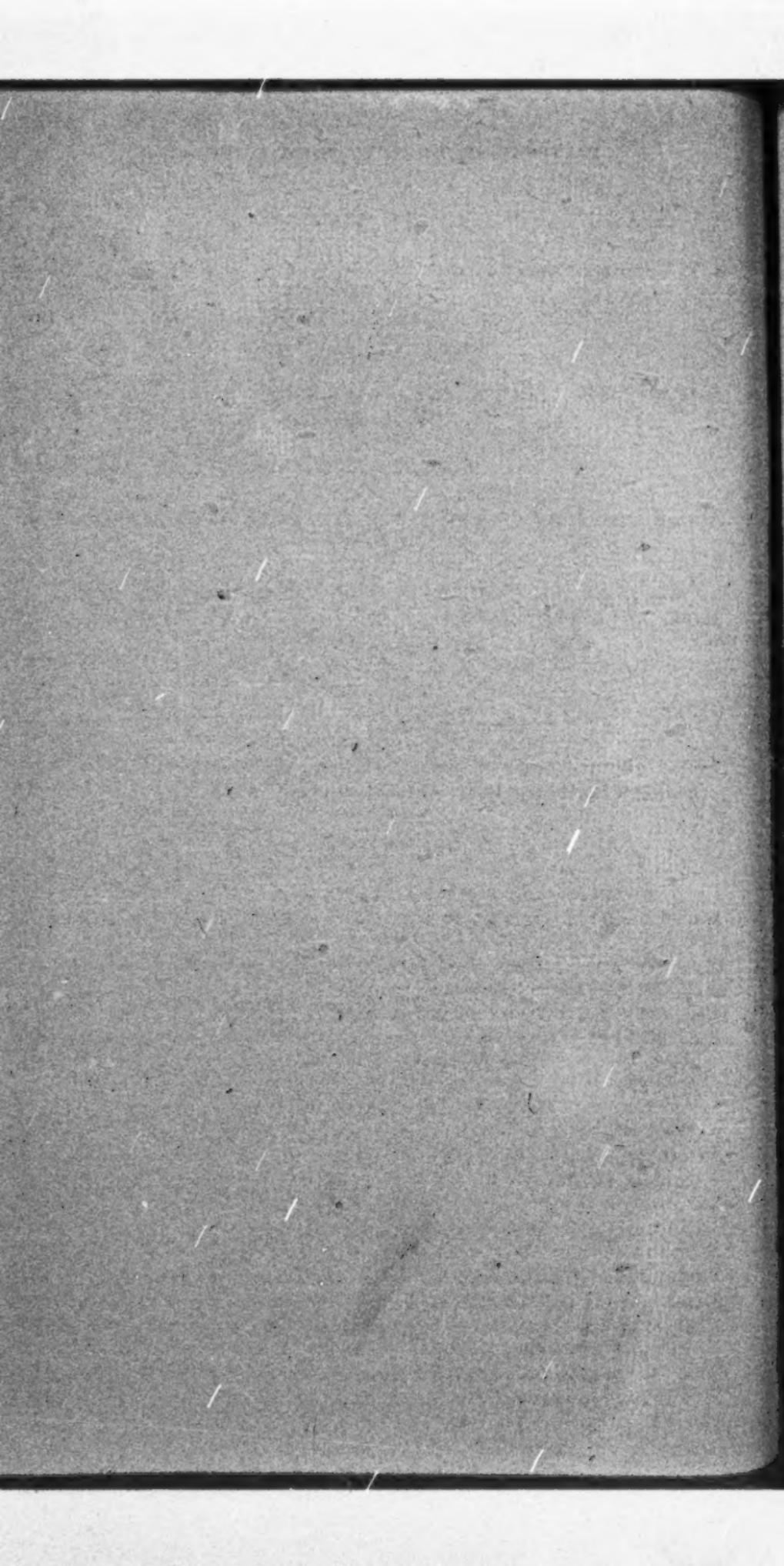
vs.

RHINE SHIPPING COMPANY, CLAIMANT OF THE SAILING SHIP "RHINE."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

PAUL NEILSEN et al., Libellants-Appellees,
against

SAILING SHIP "RHINE," RHINE SHIPPING COMPANY, Claimant-
Appellant.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Eastern
District of New York.

Office Supreme Court, U. S. Filed Mar. 26, 1918. James D.
Maher, Clerk.

1 United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,
against *

SAILING SHIP "RHINE," RHINE SHIPPING COMPANY, Claimant.

Statement.

Jan. 2, 1917.—Libel of Paul Neilsen et al. filed.

Jan. 23, 1917.—Answer to Libel filed by Claimant, Rhine Shipping
Company.

Mar. 19, 1917.—Case tried before Hon. Van Vechten Veeder, J.

May 16, 1917.—Opinion of Court filed.

Sept. 3, 1917.—Final decree entered.

Sept. 20, 1917.—Notice of Appeal and Assignment of Errors filed
by Claimant.

Libel.

To the Honorable Judges of the United States District Court for the
Eastern District of New York:

In Admiralty.

The libel of Paul Neileen, et al., in a cause of action, civil and
maritime, for balance of wages, against the sailing ship Rhine, and
J. E. Ward & Co., owners, and all other owners, respectfully shows
and alleges as follows:

2 Action under special rule for seamen to sue without security
and pre-payment of fees for enforcement of laws of the United

States, common and statutory, for the protection of health and safety of seamen at sea.

First. Libelant alleges that the sailing ship Rhine, an American vessel of over five hundred tons, engaged in foreign trade, is now within the admiralty and maritime jurisdiction of the United States and this Honorable Court, and is lying at Erie Basin, Brooklyn.

Second. That heretofore your libelant, Paul Neilsen, and nine others, namely, Herman Gusteut, Willy Richardt, John Oettler, August Johnson, Carl Christensen, William Oethoog, Frank Novy, August Jockobites and Otto Koch, signed regular shipping articles at the Port of Buenos Ayres, South America, on October 7, 1916, as A. B. seamen, for a voyage from the Port of Buenos Ayres to be discharged in New York, at the agreed rate of wages of \$25.00 per month each with keep.

Third. Your libelants further allege that in order to get the employment on the ship Rhine it was necessary for them to sign a paper which purports to be an advance note for \$25.00 wages and to be deducted from their wages.

Fourth. Your libelants allege that they did sign said note although they had received nothing in value from the person to whose order said note was made payable and although they owe nothing whatever to said person. That said notes were each for the sum of \$25.00 or one month's pay. That said notes or papers were called to the attention of the American Consul at the Port of Buenos Ayres.

Fifth. That your libelants then went aboard said vessel expecting to be paid said \$25.00, but that your libelants were not paid the \$25.00 at that time or any other time.

Sixth. Your libelants further allege that they all came to the Port of New York on board said vessel, performing their duties in a satisfactory manner, and were discharged at the Port of New York this 28th day of December, 1916, receiving the balance of their wages earned, but the sum of \$25.00 had been deducted from the amount due each seaman. That your libelants have signed under protest for said wages and have not released the owners or vessel from the payment of said \$25.00 to each one of your libelants. That they have demanded the payment of said \$25.00 from the master of said vessel, but that he has refused to give it to your libelants.

Seventh. Your libelants, therefore, allege that there is due and owing them the sum of \$25.00 each, as follows:

Paul Neilsen	\$25.00
Herman Gusteut	25.00
Willy Richardt	25.00
John Oettler	25.00
August Johnson	25.00
Carl Christensen	25.00
William Oethoog	25.00
Frank Novy	25.00
August Jockobites	25.00
Otto Koch	25.00

4 Eighth. Your libelants further allege that they have each and severally demanded payment of their wages in full from said vessel, but said wages have been refused and they now claim waiting time at the rate of one day's pay for every day they wait after forty-eight hours from date hereof, and until such time as they are paid in full, in accordance with provisions of the Sections of the United States Statutes applicable thereto.

Ninth. Your libelants further allege that if the signing of the advance note by them constitutes payment at Buenos Ayres, that same was an illegal payment, and that the laws of the United States specifically provide that the payment of such advance wages, if paid, shall not be and is not a defense to the collection of said wages in the Port of New York and the jurisdiction of this Court.

Tenth. That all and singular the matters aforesaid are within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, your libelants pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the ship Rhine, and that all persons claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment

5 of your libelants' claims in the sum of \$25.00 each, together with such further sum by way of waiting time or damages as to the Court may seem just and proper, and that said vessel may be sold and condemned to pay the same.

SILAS B. AXTELL,
Proctor for Libelant.

Office and P. O. Address, 1 Broadway, Borough of Manhattan,
City of New York.

UNITED STATES OF AMERICA,
State and County of New York, as:

The undersigned, being duly sworn, deposes and says, each for himself: that he is the libelant in the within action; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

PAUL NEILSEN ET AL.

Sworn to before me this 28th day of December, 1916.

MAURICE K. WISE,
Notary Public, New York Co., No. 252.

Register's No. 8189.

Certificate filed Kings Co. No. 6, Register's No. 3081.

Commission expires March 30, 1918.

Answer.

To the Honorable the Judges of the District Court of the United States for the Eastern District of New York:

The answer of Rhine Shipping Company, owner and claimant of the sailing ship Rhine, as proceeded against upon the libel of Paul Neilson, et al., in an alleged cause of wages, civil and maritime, alleges as follows:

First. The claimant admits the allegations of the first article of the libel as of the date of filing of said libel.

Second. The claimant admits the allegations of the second article of the libel.

Third. The claimant admits the allegations of the third article of the libel.

Fourth. The claimant admits the allegations of the fourth article of the libel, except that it denies that the respective libellants received nothing in value from the person to whose order the advance note was made payable, and except that it denies that it has any knowledge or information sufficient to form a belief as to the allegation that the libellants owe nothing whatever to said person.

Fifth. The claimant admits that the libellants went on board the ship Rhine at Buenos Aires and denies that it has any knowledge or information sufficient to form a belief as to the other allegations of the fifth article of the libel.

Sixth. The claimant admits the allegations of the sixth article of the libel, except that it denies that \$25 was deducted from the amount due each seaman, and denies the allegation that the libellants have not released the owners or vessel from the payment of \$25 to each one of the libellants.

Seventh. The claimant denies each and every allegation of the seventh article of the libel.

Eighth. The claimant denies that the libellants are entitled to pay for waiting time, and denies each and every allegation of the eighth article of the libel.

Ninth. The claimant denies each and every allegation of the ninth article of the libel.

Tenth. The claimant admits the allegations of the tenth article of the libel.

Eleventh. Further answering, the claimant alleges as follows:
The respective libellants have received from the claimant, or there has been paid for their account, their full wages for services on the sailing ship Rhine from the time when they respectively signed the articles at Buenos Aires in October, 1916, until they were discharged at New York on or about December 28, 1916. The libellants secured their respective employments on the ship Rhine through shipping masters at Buenos Aires, who charged the libellants a fee for their services, and in order to secure an opportunity to earn wages as seamen on the ship Rhine each of the libellants before signing the shipping articles signed and delivered to said shipping masters or their agents at Buenos Aires a receipt or ticket called an advance note for the sum of \$25 in favor of said

shipping masters. The respective libellants agreed that the amounts named in said receipts should be collected in advance out of the wages which they should earn on said ship Rhine. Before the libellants signed the shipping articles before the American Vice-Consul at Buenos Aires said receipts were presented to said Vice Consul with a demand for payment in the presence of the respective libellants, who thereupon acknowledged their signatures thereto. The Vice-Consul, acting in his official capacity and exercising the powers and duties conferred on him by the statutes of the United States, thereupon entered in the shipping articles an advance of \$25 against the wages which should be earned by the respective libellants, and directed the master of said ship Rhine to honor said receipts or advance notes and to pay the amounts named therein to the persons in whose favor the respective libellants had executed said receipts, and this was done. The respective libellants thereafter signed the shipping articles in the presence of the American Vice Consul with full knowledge of all the facts and circumstances and without protest or objection. If any wages were paid in advance at Buenos Aires this was done upon the advice and direction of the American Vice-Consul at Buenos Aires and at the request of the libellants, and was done within the territorial jurisdiction of the Argentine Republic, and not within the United States or in any place subject to the jurisdiction of the laws of the United States, and was not contrary to any law of the United States.

9 All and singular the premises are true.

Wherefore, the claimant prays that the libel may be dismissed with costs; and for such other and further relief as may be just.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

STATE OF NEW YORK,
County of New York, ss:

Roscoe H. Hupper, being duly sworn, says, that he is a member of the firm of Burlingham, Montgomery & Beecher, and one of the proctors for the claimant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are reports received from the master and agents of the ship Rhine, and that the reason why he makes this verification is that the claimant is a corporation, none of whose officers is within the City of New York.

ROSCOE H. HUPPER.

Sworn to before me this 23rd day of January, 1817.

[SEAL.]

L. J. MATTESON,
Notary Public, Westchester Co.

Certificate filed in New York Co.
N. Y. County Clerk's No. 120.

Stipulation.

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,
against

SAILING SHIP "RHINE," RHINE SHIPPING COMPANY, Claimant.

It is stipulated between the proctors for the respective parties that this suit may be tried on the pleadings and on the following stipulation, and for the purpose of this suit, it is stipulated, with the same effect as if witnesses were called, subject to objections as to relevancy or materiality, as follows:

First. That the articles which the respective libelants signed before the American Vice-Consul at Buenos Ayres and the receipts or advance notes which they respectively signed at Buenos Ayres, or copies thereof certified by the Shipping Commissioner at the Port of New York, shall be received in evidence, and said articles and receipts shall be deemed true and correct as to the wages of said seamen and advances made and as to all matters stated therein.

Second. That the deposition of August Johanson, taken January 2, 1917, shall be received in evidence and that each of the 11 libellants, if called, would testify to precisely the same effect as the said August Johanson with regard to securing employment on the ship Rhine, signing the receipts and articles and with regard to payment of wages, and that each of the libellants would testify that before securing, and as a means of securing, employment on the ship Rhine it was necessary for him to sign a receipt or advance note for one month's wages and deliver the same to a Shipping Master, which, when delivered, was an assignment out of wages of the amount therein named.

Third. That the master would testify that the shipping of seamen for sailing vessels at Buenos Aires is controlled by Shipping Masters, among whom was Tommy Moore, in whose favor the libellants signed the receipts mentioned in article first of this stipulation; that the master of the ship Rhine, if called, would testify that it would have been impossible to secure a crew for said ship at Buenos Aires except by agreeing to pay one month's wages in advance; that the advance notes which the respective libellants signed at Buenos Aires were presented to the American Vice-Consul at Buenos Aires before the libellants signed the articles, and the advances were noted on said articles by said Vice-Consul; that he was then directed by said Vice-Consul, in the presence of the respective libellants, to honor said receipts or advance notes and to pay the same on account of the wages of the respective libellants, and that pursuant to said direction he paid or caused to be paid the amounts named therein to the persons in whose favor they were executed and to whom they had 12 been delivered by the respective libellants; that the amounts thus paid at Buenos Ayres were deducted from the wages that

except for such payment would have been due to the respective libelants when they were discharged at New York.

Fourth. That the American Vice Consul at Buenos Aires when he instructed the master of the ship Rhine to honor said advance notes had been duly instructed by the Department of Commerce of the United States to recognize and allow such advances to seamen at Buenos Ayres; that with respect to all matters herein mentioned said Vice-Consul was duly acting in the performance of his regular official duties; that all the transactions herein mentioned took place within the City of Buenos Aires, the Argentine Republic, or as indicated by the evidence.

Fifth. That the Shipping Commissioner at the Port of New York allowed the deductions which were made because of the payments made in advance at Buenos Aires, as shown by the articles; that said Shipping Commissioner has received from the Department of Commerce an opinion or ruling directing the allowance of advances made at foreign ports, and that copies of said opinion or ruling, certified by said Shipping Commissioner, shall be received in evidence as full proof of the matters therein stated; that Sections 236 and 237 of the Consular Regulations of the United States, duly published by the State Department, provide as follows:

"236. No Advance Wages.—Except in the case of whaling vessels, it is not lawful to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay to any one except an officer authorized by Act of Congress to collect fees for such service, any remuneration for the shipment of a seaman. If any such advance wages or remuneration shall have been paid or contracted for, the Consul, in making up the account of wages due the seaman upon his discharge, will disregard such advance payment or agreement and award to the seaman the amount to which he would be entitled if no such payment or agreement had been made. Nor should Consuls permit the statute to be evaded indirectly, as by part payment in advance and then stating rate of wages too small. R. S., Secs. 4532, 4533; 23 Stat. L. 55, Sec. 10; 24 Id. 80, Sec. 3; 27 Fed. Rep. 764."

"237. Advances to Seamen Shipped in Foreign Ports.—The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of the Act referred to in the next preceding paragraph. The final clause of the Act, which declares that this section shall apply as well to foreign vessels as to those of the United States, and that in case of violation a clearance shall be refused them, is a clear indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in the United States alone.

14 The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports. In the settlement of wages due seamen in such cases, therefore, con-

sular officers will take into account what has been paid in advance. 22 Fed. Rep. 734."

Dated, New York, February 7th, 1917.

SILAS B. AXTELL, *Proctor for Libellants*
BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

15. AUGUST JOHANSON, being duly sworn, testifies as follows:

Direct examination by Mr. Axtell:

- Q. What is your name?
A. August Johanson.
Q. Where do you live?
A. Seamen's Institute; 25 South Street.
Q. You are going to sea, are you?
A. Yes.
Q. Are you an able-bodied seaman?
A. No.
Q. Were you on the ship Rhine?
A. Yes, I am from the Rhine.
Q. Did you make a trip on her?
A. Yes.
Q. How much a month?
A. Twenty-five dollars a month.
Q. You shipped at Buenos Ayres?
A. Yes.
Q. Who shipped you there?
A. Benson.
Q. Who does he work for?
A. Willy Moore.
Q. You signed before the consul?
A. Yes.
Q. You took an advance?
A. We signed for \$25.00 advance, but we didn't get it.
Q. Did you sign your name to something?
A. Yes.
Q. What was it?
A. It was a ticket from the shipping master.
Q. Did you get that money at New York?
A. No.
Q. Did you get it down there?
A. No.
Q. Did you owe any board or lodging?
A. No.
Q. Did you know that you would not get the \$25.00 when you signed down there?
A. No.
Q. When did you expect to get it?
A. On board.
Q. Who did you think was going to give it to you?
A. The captain.

- Q. Did you ask him for it?
A. No. We went right out to sea when we got on board.
16 Q. Had you been on the ship before you went to the consul's office.
A. No.
Q. Did you go to sea the same day you signed?
A. No, the day after.
Q. You signed on Saturday?
A. Yes.
Q. You stayed where that night?
A. In my home.
Q. What is your home?
A. The German Sailor Home.
Q. Are you a German?
A. Yes.
Q. You are claiming waiting time until you are paid your wages.
Is that right?
A. Yes.
Q. You signed your name to the libel here the other day?
A. Yes.
Q. Do you know how many other men there were who signed
and have claim for this advance?
A. About eleven.
Q. Do you know Herman Gustant?
A. Yes.
Q. Willy Richardt?
A. Yes.
Q. John Oettler?
A. Yes.
Q. August Johanson?
A. That's me.
Q. Christensen?
A. Yea.
Q. Frank Novy?
A. Yes.
Q. August Jacobson?
A. Yea.
Q. Paul Neilson?
A. Yes.
Q. Otto Coke?
A. Yea.
Q. Did they all sign down there at the same time?
A. No, some of them came on board after.
Q. You were not at the pier?
A. No.
Q. Weren't they afraid you would get away?
A. We can't get away.
Q. Did these men all sign tickets before the shipping master?
A. Yes.
Q. Did you see them?
A. Yes.

Q. Do you know whether they got their money down
17 there at the shipping commissioner's office?

A. Yes.

Q. Did they get the \$25.00?

A. No.

Q. Were they all signed on at the same rate of pay? \$25.00 in advance?

A. Yes.

Q. And they didn't get it?

A. No.

Cross-examination.

By Mr. Hupper:

Q. Where were you born?

A. Hamburg, Germany.

Q. How long is it since you have been there?

A. 14 years.

Q. You haven't been there for fourteen years?

A. No. I have been away from Hamburg three and a half years.

Q. How old are you?

A. Eighteen and a half.

Q. What other vessels were you on before the Rhine?

A. A German vessel.

Q. What was her name?

A. Obotreta.

Q. Did you live there at Buenos Ayres?

A. No, at Valparaiso.

Q. Then you went down to Buenos Ayres?

A. Yes.

Q. Did you stay in Buenos Ayres?

A. No, I went on a German steamboat there.

Q. What was her name?

A. Genfeld.

Q. Then did you stay on her until you went on the Rhine?

A. Then I worked ashore a couple of months and then I came on the Rhine.

Q. Did you live ashore?

A. Yes.

Q. Where?

A. At the German Sailors' Home.

Q. And have you been there since you shipped on the Rhine?

A. Yes.

Q. How did you happen to go for this shipping master?

18 A. I met him on the street one day.

Q. What was his name?

A. His name is Benson.

Q. It wasn't Moore?

A. He was a runner for Moore.

Q. Did you know him before?

A. No.

Q. He just asked you if you wanted a job?

A. Yes.

Q. And what did you say?

A. I said "if I can get a job, I want to get away from this place."

Q. And what did he say?

A. "You can get a job if you come to me" and I said "I will come."

Q. Then what did he say?

A. "Come to me tomorrow morning at ten o'clock.

Q. How many days was that before you went on the Rhine?

A. One day before.

Q. And you went there. And what did he say then?

A. We went to the consul.

Q. Where did you sign this advance note?

A. In his home.

Q. What did he say to you when he asked you to sign it?

A. If we want to sign for \$25.00 a month wages and \$25.00 advance.

Q. And you did sign a ticket?

A. Yes.

Q. Would you recognize your signature if you saw it? Would you remember where you signed it if you could see the signature?

A. No.

Q. Just come here. Is that your signature?

(Witness identifies his signature on ticket dated Buenos Ayres, 7/10/16.)

(Claimant's Exhibit A for identification.)

19 Q. And then you went to the consul's after that?

A. Yes.

Q. And you signed on the articles before the consul?

A. Yes.

Q. Can you read?

A. Not very proper.

Q. You can read though?

A. Yes.

Q. Can you write?

A. Yes.

Q. Just come here again. Are these the articles you signed before the consul?

A. Yes.

Q. Will you point out your name?

A. (Witness indicates name "August Johanson" on Page 4 of articles, opposite No. 39.)

Q. You signed your name on there before the consul?

A. Yes.

Q. And all the rest of them did the same?

A. Yes.

Q. Now, what did the consul tell you?

A. He showed us that ticket that we write at Willy Moore's house and ask us if we sign it.

Q. Did he ask each one of you that?

A. Yes.

Q. And what did you say?

A. "Yes."

Q. And did the others all say "Yes?"

A. Yes.

Q. And then what did the consul say?

A. That we have to write the name on this papers.

Q. Did he put the figures down here on the articles after he said to sign the advance note?

A. No.

Q. When did you see the consul write this?

A. Before he wrote our name.

Q. And did everybody else do it the same way?

A. Yes.

By Mr. Hupper: I ask to have these articles marked Claimant's Exhibit B.

20 Q. What day were you shipped off before the shipping commissioner here?

A. 28th of December.

Q. And where are you staying now?

A. Seamen's Institute.

Q. Did you sign anything before the shipping commissioner here?

A. Not yet.

Q. Did you get any money?

A. Yes.

Q. How much?

A. \$38.00.

FRANK NOVAK and LUCAS ZUVIY, being duly sworn, testify as follows:

The witness, Frank Novak, identifies advance ticket he signed at Buenos Ayres; admits his signature, and it is marked Claimant's Exhibit C.

The witness, Lucas Zuviy, identifies advance ticket he signed at Buenos Ayres, dated October 18, 1916.

It is stipulated that all the libellants signed the articles; that an advance of one month's wages appears to have been made to each one at Buenos Ayres, according to the articles; and it is a conceded fact for the purposes of this case that said wages were paid to the seamen by means of advance notes prior to the time earned.

It is further stipulated that there is a receipt attached to the articles bearing the signature of each of the libellants herein for one month's wages which reads as follows:

"Buenos Ayres, July 10, 1916.

21 Received of Mr. P. Frederickson the sum of \$25.00 for services rented (rendered) on board the American ship Rhine, \$25.00, U. S. gold. CARL CHRISTIANSEN."

The names on the receipts appear to be as follows:

M. Uthorpe.
August Jacobston.
Carl Christiansen.
August Johanson.
Herman Geistent.
Lucas Zuviy.
F. Novak.
Willie Richardt.
Paul Neilson.
Otto Coch.
John Ottboe.

All of the receipts are in similar form and all bear date of July 10, 1916, except Otto Coch, F. Novak and Lucas Zuviy, which are dated October 13, 1916.

It is further stipulated that all the witnesses will testify that they signed articles about the ninth of October, and that they went aboard the ship on the tenth of October, and that said vessel sailed from said port a few days thereafter.

Lucas Zuviy testifies that he paid 150 pesos, or about \$60.00, to a shipping master to get the job in addition to the month's wages, and that he was told that he would be paid his full wages without any month's advance deduction, and that he owed no board or lodging to anybody at the time.

22

Opinion.

United States District Court, Eastern District of New York.

May 25, 1917.

PAUL NEILSEN et al.

vs.

SAILING SHIP "RHINE."

JOHN HARDY et al.

vs.

BARKENTINE "WINDRUSH."

Silas B. Axtell, for Libellants.

Burlingham, Montgomery & Beecher (Roscoe H. Hupper), for Claimants.

In the first case Paul Neilson and nine other seamen sue for the recovery of wages claimed to be due them from the bark Rhine. It appears that they shipped on the American bark Rhine, at Buenos Ayres, Oct. 7, 1916, for a voyage to New York, at the rate of \$25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Ayres is controlled by certain shipping masters, to one of whom the libellants, in accordance with the usual custom

and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buenos Ayres before the 23 libellants signed the articles, were by him noted on the articles and, in the presence of the libellants, directed to be paid on account of the wages of the respective libellants. It was further stipulated that in directing the master of the Rhine to honor such advance notes, the Consul was acting in accordance with Section 237 of the Consular Regulations of the United States. When the bark arrived at New York the libellants were paid the wages earned, less the \$25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of Section 10 (a) of the Act of March 4, 1915, entitled "An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States," which declares such advances to be unlawful and of no effect.

The facts in relation to the case of the Barkentine Windrush differ from the above only in respect of the fact that the advance notes are not in evidence, but are noted on the articles.

The sole question involved is whether the statutory provision referred to applies to advances made by American vessels in foreign ports. The original enactment prohibiting advances dates from 1884 (Act of June 26, 1884, c. 121, §10). It was amended three times between that date and the Act of March 4, 1915 (namely, by the Act of June 19, 1886, c. 421, §3; the Act of Dec. 21, 1898, c. 28, §24; the Act of Apr. 26, 1904, c. 1803, §1), but without material change in any respect here involved.

In Patterson v. Bark Eudora, 190 U. S., 169, the Supreme Court of the United States held, in 1903, that the prohibition applied to advances made by a foreign vessel in an American port. 24 But there have been only two cases since the original enactment in 1884 which cover the issue now raised. In 1884 Judge Addison Brown held in the State of Maine, 22 Fed., 734, that this section did not apply to advances made by an American vessel within a foreign jurisdiction. On the other hand, Judge Ervin, sitting in the Southern District of Alabama, has recently held in Koskiner v. The Imberhorne (not yet reported) that the section applies to advances made in foreign ports (even by foreign vessels). It would serve no useful purpose to recapitulate the particular considerations urged in support of the opposing conclusions. The arguments in support of one construction of the statute are not susceptible of a conclusive answer by the advocate of an opposing construction; a final conclusion can be based only upon a preponderance of the considerations which serve to disclose the intent of Congress. I shall hold that the statutory provision in question applies to the situation presented here, and that the advances in issue, although made in a foreign port, having been made by vessels of the United States, were unlawful and may be recovered by the seamen.

Decree for libellants in each case, with costs, for the amount of the advance payments deducted. Under the circumstances the claim to the penalty specified in U. S. Rev. St., Sec. 4529, is denied.

VAN VECHTEN VEEDER, U. S. J.

25

Final Decree.

At a Stated Term of the United States District Court Held in and for the Eastern District of New York, at the Post Office Building, in the Borough of Brooklyn, City of New York, on the 3rd Day of September, 1917.

Present: Hon. Thomas I. Chatfield, District Judge.

PAUL NEILSEN et al., Libellants,
against

SAILING SHIP "RHINE," Her Tackle, Apparel, etc.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and due deliberation having been had and the Court having filed its opinion, it is now

Ordered, adjudged and decreed, by the Court, that the libellants recover against the sailing ship Rhine, her tackle, apparel, etc., and J. E. Warden, owners, the sums set opposite their names, as follows:

Paul Nielsen	\$25.00
Herman Guseut	25.00
Willy Richardt	25.00
John Settler	25.00
26 August Johnson	25.00
Carl Christiansen	25.00
William Oethoog	25.00
Frank Novey	25.00
August Jockobites	25.00
Otto Koch	25.00,

together with costs and disbursements, taxed in the sum of \$35.60, making, in all, the sum of \$285.60, and that the said sailing ship Rhine be condemned to pay the same, and it is

Further ordered, that unless an appeal be taken from this decree within ten days, the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of the said sailing ship Rhine do cause the engagements of their stipulators to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulations.

Enter,

THOMAS I. CHATFIELD, D. J.

27

Notice of Appeal.

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,
against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

SIRS: Please take notice that the claimant herein hereby appeals to the United States Circuit Court of Appeals, Second Circuit, from the final decree in the above action, entered in the office of the Clerk of the United States District Court for the Eastern District of New York on the 19th day of June, 1917, and from each and every part of said decree.

Dated, New York, September 20, 1917.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

27 William Street, Borough of Manhattan, City of New York, N.Y.

To: Silas B. Axtell, Esq., Proctor for Libellant, 1 Broadway, New York City; Percy G. B. Gilkes, Esq., Clerk, U. S. District Court, Eastern District of New York, Brooklyn, N. Y.

28

Assignments of Error.

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,
against
BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

The claimant, Rhine Shipping Company, hereby assigns error in the final decision and decree of the District Court:

1. In that the Court held that section 10 (a) of the Act of March 4, 1915, prohibited the payment of advance wages to the seamen within the territorial jurisdiction of the Argentine Republic.
2. In that the Court held that the wages paid in advance at Buenos Ayres were unlawfully paid and could be recovered by the libellants.
3. In that the Court did not hold that the libellants had been paid their full wages and were entitled to no recovery in this suit.
4. In that the Court made a decree in favor of the libellants.
5. In that the Court did not dismiss the libel.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

29

S stipulation as to Record.

United States District Court, Eastern District of New York.

PAUL NEILSEN et al., Libellants,
against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

It is stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled suit, as agreed on by the parties.

Dated, New York, October —, 1917.

SILAS B. AXTELL,
*Proctor for Libellants.*BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

30

Clerk's Certificate.

United States District Court, Eastern District of New York.

PAUL NEILSON et al., Libellants,
against

BARK "RHINE," RHINE SHIPPING COMPANY, Claimant.

I, Percy G. B. Gilkes, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the record of the District Court in the above entitled suit as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be affixed at the City of New York this — day of October, in the year of our Lord, One thousand nine hundred and seventeen and of the Independence of the United States the One hundred and forty-second.

PERCY. G. B. GILKES, *Clerk.*

31 United States Circuit Court of Appeals for the Second Circuit,
October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

**BARKENTINE "WINDBRUSH," Her Tackle, etc., SHEPARD & MORSE
LUMBER COMPANY, Claimant-Appellant.**

PAUL NEILSON et al., Libellants-Appellees,

v.

SAILING SHIP "RHINE," Her Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

**Appeals from the District Court of the United States for the Eastern
District of New York.**

**Appeals in Admiralty from Decrees Entered in District Court for the
Eastern District of New York.**

Both the craft named are vessels of the United States, within the meaning of that phrase as used in the statutes affecting ships and seamen. In 1906 both were at Buenos Ayres, the Windrush in May and the Rhine in October; both wanted crews, and neither could get one (as is stipulated in writing) "except by agreeing to pay one month's wages in advance." This means, as is fairly shown by evidence, that the keepers of sailors' boarding houses, commonly known as "crimps" have in that port such control of seamen, that no master can get a crew except by applying to them.

Both vessels got crews through a crimp; of the men shipped some had actually stayed with the boarding master, or obtained supplies from him or both; others had merely gone to him as a means of finding employment; all however were treated alike, viz: taken before the United States Consul, and signed on the articles, each man giving to the boarding master an advance note for one month's wage, the payment of which was duly noted. All the men so shipped knew what they were doing, and apparently regarded it as the custom of the port and common incident of their trade; so undoubtedly did the master; nor is there any evidence that the captain or owner profited directly or indirectly by the transaction. They or their agents paid the advance notes before the ship left Buenos Ayres.

On arrival at New York, the libellants refused to recognize the charges or deductions, and brought suit for a month's pay apiece, as for so much wages wrongfully withheld. The court below awarded the amount claimed, and claimants took these appeals,—which were argued together, the questions raised being identical.

Roscoe H. Hupper, for Appellants.

Silas B. Axtell, for Appellees.

HOUGH, C. J.:

The facts of these cases are in all material aspects those recited in
 The State of Maine, 22 F. R., 734. Judge Addison Brown
 33 there gave judgment as to whether the then Seaman's statute,
 commonly known as the Dingley Act (June 26, 1884; 23
 Stat., 55) entitled libellants such as these to a recovery; the present
 question is whether (assuming the correctness of the decision cited)
 more recent legislation, commonly known as the La Follette Act
 (March 4, 1915; 38 Stat., 1168) requires a different ruling.

The material words of the statutes may be put in parallel thus
 (some immaterial phrases being omitted or shortened):

1884.

It is hereby made unlawful to pay any seaman wages before leaving the port at which he may be engaged, in advance of the time when he has actually earned the same, or to pay such advance to any other person, or to pay any remuneration, (to one not authorized by Act of Congress) for shipment of seamen.

Any person paying advance wages, or such remuneration shall be deemed guilty of a misdemeanor, and punished by fine and (at option of the court) imprisonment.

The payment of such advance wages, or remuneration, shall in no case absolve the vessel from full payment of wages after they shall have been earned, and be no defence to a libel for recovery of wages.

34

This section shall apply as well to foreign vessels as to vessels of

1915.

It is hereby made unlawful to pay any seaman wages in advance of the time when he has actually earned the same, or to make any order or note therefor to any other person or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.

Any person violating the foregoing shall be deemed guilty of a misdemeanor and punished by fine, and (at option of the court) imprisonment.

The payment of such advance wages on allotment shall in no case absolve the vessel from full payment of wages after they shall have been earned and shall be no defence to a libel for recovery of wages.

If any person shall receive from any seaman any remuner-

the United States, and any foreign vessel violating the same shall be refused a clearance.

ation for providing him with employment, such person shall be deemed guilty of a misdemeanor and punished with fine or imprisonment.

This section shall apply as well to foreign vessels, while in waters of the United States, as to vessels of the United States, and any foreign vessel violating the same shall be refused a clearance.

The master, &c., of any vessel (domestic or foreign) seeking clearance from a port of the United States shall present his shipping articles at the office of clearance,—and none shall be granted unless the provisions of this article have been complied with.

The case of the State of Maine held that this portion of the statute of 1884 had no application to the employment of seamen by American vessels in foreign ports. That it was well decided we have no doubt, agreeing as we do with the reasons assigned, and considering the intellectual authority of a decision by that Judge of the highest.

The State Department, which through the Consuls, is charged with oversight of shipment of seamen abroad, accepted the ruling, and embodied it (with due reference to the decision) in the Consular Regulations, Sec. 237,—nor did the passage of the Act of 1915 produce any change in departmental instructions; what governed the action of the Consul at Buenos Ayres, when these libellants were shipped, was the rule of The State of Maine.

35 The only other interpretation of the Dingley Act thought instructive here is The Eudora, 190 U. S., 169, holding the statute applicable to foreign vessels in American ports, mainly on reasoning more elaborately set forth in Wildenhus' case, 120 U. S., 1, i. e. that any vessel and those on board her are subject to the civil and criminal law of the country into whose ports they come,—such subjection is one of the implied conditions of entry, which is a favor and not a right.

Unless there has been a change in the legal content of the statute, its interpretation must remain unchanged. So far as the language above given is concerned, there is but one change that can be relied on, i. e. that the application of the act to foreign vessels is expressly limited to waters of the United States, from which it is argued that the application to domestic vessels must be universal.

Of this it may be said, that by the same train of reasoning, some significance must be given to the section regarding clearances, in respect of which for domestic ships, the Act of 1884 said nothing; must it then follow that prior to 1915 vessels of the United States

violating the statute were necessarily entitled to clearance? Such a contention could not be made.

Indeed the argument for libellants proceeds mainly and frankly on the ground that the Act of 1915 is in its entirety so obviously remedial, that by it the status of seamen has been so radically changed, and the rigidity of their engagements so greatly relaxed, that it must have been intended to make the statute extraterritorially operative, and uplift sailors by putting on their employers the cost of a rascally way of doing business, over which this country has no direct jurisdiction.

Undoubtedly the methods of shipment exhibited in this record are vile, and it may be admitted as within legislative power to improve the social customs of a contract breaker, by encouraging the act of breach; but we are bound by what Congress did as expressed in the words employed, having recourse for that purpose to "the whole context of the statute" (*Johnson vs. Southern Pacific Co.*, 36 196 U. S., 1), and this is true even when the law is both remedial and penal, but with the "design to give relief more dominant than to inflict punishment."

We find no words in the entire act rendering the particular kind of relief here sought, certainly within the legislative intent or meaning. We have not before us any reports of congressional committees, which however may be consulted only to ascertain motive (*McLean vs. United States*, 226 U. S., 374).

There are however some rules of law which the legislature must have intended by the words of this act to overset, if the libellants are entitled to a decree.

This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction (*United States vs. Trans-Missouri Ass'n*, 58 F. R., at 67). In every doubtful case, contemporaneous (*Houghton vs. Payne*, 194 U. S., 88) and departmental (*United States vs. Cerecido &c. Co.*, 209 U. S., 337) construction is entitled to weight, when the words of a statute get before a court. That the present act is remedial is admitted, so was that of 1884, but both are also plainly penal. That remedies of the kind here demanded by libellants are more in favor now than in 1884, is true enough; but words have not necessarily changed their ordinary meaning, and the rules of statutory construction remain unaltered. The remedial and penal portions of the part of the statute under consideration cannot be separated, if what these ship masters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (*Rex vs. Sawyer*, 1 C. & K., 101) every and the strongest presumption is against such construction (*American, &c. Co. vs. United Fruit Co.*, 213 U. S., 347).

The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this, that this executed contract must be set aside, because the statute in effect declares it repugnant to the "policy and morality" of the people of the United States.

37 We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to, ordinarily affects only executory contracts. The situation here is this, libellants demand a part of their wages in accordance with the law of the United States; respondents answer,—we paid you that part in Argentine in accordance with the law of that country; libellants reply the law of the United States refuses to recognise that lawful and completed transaction. For so extreme a doctrine support can be found only in plain unquestioned legislative order; and such order cannot be discovered in this statute.

In *The Eudora* and *State of Maine* (*supra*) a subsidiary reason for the harmonious construction there given to the Act of 1884, was that the announced rulings put foreign and domestic vessels on the same footing. That doctrine also was presumptively before Congress in passing the later statute. The ruling made below gives foreign vessels an advantage, certainly if (e. g.) the voyage is from one foreign port to another. No intent to do this is perceivable in the Act.

We have not overlooked *The Imberhorne*, 240 F. R., 830, and *The Talus*, 242 F. R., 954. In so far as they do not harmonize with the foregoing, we differ.

Decree reversed, and causes remanded with directions to dismiss the libels.

38 United States Circuit Court of Appeals for the Second Circuit,
October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,
v.

BARKENTINE "WINDRUSH," Her Tackle, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.

PAUL NEILSON et al., Libellants-Appellees,
v.

Sailing Ship "RHINE," Her Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern District of New York.

LEARNED HAND, D. J. (dissenting):

If Section 10 (a) had not been amended in the clause here in question, I should have felt bound by the construction which Judge

39 Brown had put upon it in *The State of Maine*, 22 Fed. R. 903, under the well-settled rule that a prior accepted interpretation of the statute is incorporated into its reenactment. Moreover, I think that Judge Brown's decision was certainly right at the time he made it. His fourth reason for excluding American ships from the operation of the statute while in foreign ports seems to me to be unanswerable. The statute did not discriminate, as he says, between foreign vessels and those of the United States and it was necessary to give the general language of the statute the same application to one class as to the other.

Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in *Patterson v. Bark Eudora*, 190 U. S., 169, held that foreign vessels were bound, and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause, "while in waters of the United States," in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase, "foreign vessels." If the statute had read "as well to foreign vessels as to vessels of the United States, while in the waters of the United States," there could have been no doubt, but the limitation by its position directly affecting one class seems to me to give the other its general meaning, unless there was good contrary reason in the context.

I can see no reason in the context for such a limitation. Of course it results in some extra-territorial operation of the statutes, but only as regards vessels of the United States and we are used enough to statutes which assume to do that. It would not strain the interpretation of a statute to make it apply to any act done on board ship. It is true, these acts were done ashore, but they were to engage crews who should perform all their services in a United States ship; they were a condition upon those services and touched them as closely as possible. When performed by an American master, at least, not to consider an owner, no valid distinction in the purpose of the statute seems to me to be found in the locus of the act. The penalties 40 against "crimps" in foreign countries stand upon a different footing; they are not associated with United States vessels and subject normally to the laws of the United States.

Again it is said that the provision making compliance with the statute a condition on clearances shows an intention to limit the application of the statute. Yet this touches only the remedy, and it would be a hard rule which limited the substance, because the remedy could not in the nature of things be coextensive with its general application. No inference seems to me justified from such a consideration.

Finally, the claimant insists that it puts United States vessels at a disadvantage in foreign ports. In such countries as do not protect their seamen against this form of exploitation, this is doubtless true, but the provision itself presupposes that the seamen are at an economic disadvantage. The initiative in all such efforts to impose a standard of wages bears at first against local industry. If it is not undertaken, all remedies must wait till other nations join. Granted

the supposed injustice of the practice, the ships or the men must therefore suffer till the evils of the practise get general recognition. The incidental burden on trade may conceivably not have been thought of equal moment with the putative welfare of the crews. In any case it seems to me that such considerations are beyond the proper cognizance of courts of law. Surely we have no right to assume that the interest of the state depends more upon the welfare of one of these conflicting economic classes than the other.

I dissent.

41 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court-rooms in the Post Office Building in the City of New York, on the 25th Day of February, One Thousand Nine Hundred and Eighteen.

Present: Hon. Henry G. Ward, Hon. Charles M. Hough, Circuit Judges; Hon. Learned Hand, District Judge.

PAUL NEILSON et al., Libellants-Appellees,

v.

SAILING SHIP RHINE, Here Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is reversed with costs and cause remanded with instructions to dismiss the libel.

H. G. W.
C. M. H.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

42 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Paul Neilson et al., v. Ship "Rhine." Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 25, 1918. William Parkin, Clerk.

43 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing

pages, numbered from 1 to 42 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Paul Neilson et al., against Sailing Ship "Rhine" as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of March, in the year of our Lord One Thousand Nine Hundred and Eighteen and of the Independence of the said United States the One Hundred and forty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

44 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Sailing Ship "Rhine," Rhine Shipping Company, Claimant, is appellant, and Paul Nielsen et al. are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you
45 that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 26403. Supreme Court of the United States, October Term, 1917. No. 936. Paul Nielsen et al., vs. Rhine Shipping Company, Claimant of Sailing Ship "Rhine." Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 8, 1918. William Parkin, Clerk.

46 United States Circuit Court of Appeals for the Second Circuit,

PAUL NIELSEN et al., Libelants-Appellees,
against

SAILING SHIP "RHINE" and RHINE SHIPPING COMPANY, Claimants-
Appellants.

It is hereby stipulated, by and between the proctors for the respective parties hereto, that the transcript of record on file in the office of the clerk of the United States Supreme Court, may be taken as a return to the writ of certiorari in the above entitled action.

Dated, New York, April 8th, 1918.

S. B. AXTELL,

Proctor for Libelants-Appellees,
BURLINGHAM, VEEDER, MASTE &
FEARY,

Proctor for Claimant-Appellants.

47 To the Honorable the Supreme Court of the United States,
Greeting:

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, April 9th, 1918.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

48 [Endorsed:] 936/26403. United States Circuit Court of Appeals, Second Circuit. Paul Nielsen et al. v. "Rhine." Return to Certiorari.

49 [Endorsed:] File No. 26403. Supreme Court U. S., October Term, 1917. Term No. 936. Paul Nielsen et al., Petitioners, vs. Rhine Shipping Company, Clmt., etc. Writ of certiorari and return. Filed April 15, 1918.

(26,404)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 937.

JOHN HARDY ET AL., PETITIONERS,

vs.

SHEPARD & MORSE LUMBER COMPANY, CLAIMANT OF
THE BARKENTINE "WINDRUSH."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

JOHN HARDEY et al., Libellants-Appellees,
against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER COMPANY,
Claimant-Appellant.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Eastern
District of New York.

1 United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,
against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER COMPANY,
Claimant.

Statement.

Aug. 10, 1916. Libel of John Hardy et al., filed.
Nov. 2, 1916. Answer to libel filed by claimant Shepard & Morse
Lumber Company.
Mar. 19, 1917. Case tried before Hon. Van Vechten Veeder, J.
May 26, 1917. Opinion of Court filed.
Sept. 3, 1917. Final decree entered.
Sept. 20, 1917. Notice of appeal and assignment of errors filed by
claimant.

Libel.

To the Honorable Judges of the United States District Court, Eastern
District of New York:

In Admiralty.

The libel of John Hardy et al., libellants against the barkentine
Windrush, her tackle, apparel, etc., in a cause of action,
2 civil and maritime for wages, allege as follows:

First: That the barkentine Windrush, an American vessel
of over five hundred tons, at and during all the dates and times
hereinafter mentioned, engaged in the merchant trade of the United
States, is now lying or about to come within the jurisdiction of the
United States and this Honorable Court.

Second: Your libelants allege that at and during all the dates

and times hereinafter mentioned, one Roberts was master of said vessel; that heretofore and on the 10th day of May, 1916, said vessel was lying in the port of Buenos Ayres, Argentine, South America.

Third: Your libelants, John Hardy, seaman; Fred Nielsen, seaman; August Nielsen, seaman; Wilhelm Rohr, seaman; Paul Udson, seaman; John Broather, seaman; F. Christiensen, seaman; Johannes Heimo, seaman, and Artlfur Goldstein, cook, further allege that heretofore and on the 10th day of May, 1916, or thereabouts, they were hired and engaged by the master of said vessel to make a voyage at Buenos Ayres to the port of New York as seamen and cook respectively at the rate of wages of Forty (\$40.00) Dollars per month for cook and Twenty-five (\$25.00) Dollars per month for your other libelants as seamen.

Fourth: Your said libelants further allege that in accordance with their contract of employment as above set forth, they went on board said vessel, performing all duties required of them until said
3 vessel reached the port of New York and including the 13th day of July, 1916.

Fifth: Your libelants further allege that on account of services performed by them as stated, there is now due and owing to them on account of wages, over and above all payments made on account to date hereof, the sum of Twenty-five (\$25.00) Dollars to each of the above mentioned libelants described as seamen and the sum of Forty (\$40.00) Dollars to your libelant Arthur Goldstein, who is mentioned as and who was cook on board said vessel.

Sixth: Your libelants further allege that the above said sums are due them and were due them on the 13th day of July, 1916, but that the master and owners of said vessel have illegally and wrongfully withheld the payment of same and still illegally withhold payment of said wages to them; that said wages have not been tendered to them and have illegally been deducted.

For a Second Cause of Action.

Seventh: Your libelants further allege that the master of the barkentine Windrush has paid to your libelants or persons on their behalf, the sum of one month's wages each in advance of the time earned; that said money was illegally deducted and paid; that your libelants received no value for said payments; that said payments were made in contravention to Section 10 of the U. S. Statutes, Section 4611 of the Act of Congress of March 6th, 1915, which section reads as follows:

4 Section 10 (a). That it shall be and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advanced wages or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this Section shall be deemed guilty of a misdemeanor

and, upon conviction, shall be punished by a fine of not less than \$25.00 nor more than \$100.00, and may also be imprisoned for a period of not exceeding six months, at the discretion of the Court. The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.00.

By reason of said statute, libellants allege that said wages are due and owing to them as alleged.

5 Eighth: Your libellants further make claim upon the master and owners of said vessel for waiting time in accordance with Sections 4529 and 4530 of the U. S. Revised Statutes and as amended, thereby claiming one day's pay for waiting time after the expiration of forty-eight hours from the date when due, or from July 15, 1916, thereafter until paid.

Ninth: That all and singular the foregoing are within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, your libellants pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the barkentine Windrush, and that all persons having or claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Court may be pleased to decree the payment of your libellants' claims in the sum total of Two Hundred and Forty (\$240.00) Dollars and for waiting time, and that said vessel may be sold and condemned to pay the same, and that your libellants may have such other and further relief as to the Court may seem just and proper.

SILAS B. AXTELL,
Proctor for Libellants.

Office and P. O. Address, No. 1 Broadway, Manhattan, New York.

6 STATE OF NEW YORK,
City and County of New York, ss.

Silas B. Axtell, being duly sworn, deposes and says that he is the proctor for the libellants herein; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by

libellants is because libellants are at the present time not within the jurisdiction of this court and not within the county where your deponent resides.

SILAS B. AXTELL.

Sworn to before me this 28th day of July, 1916.

MAURICE K. WISE,
Notary Public, New York Co., No. 252.

Register's No. 8189.

Certificate filed Kings Co. No. 61, Register's No. 8089.
Commission expires March 30, 1918.

7

Answer.

To the Honorable the Judges of the United States District Court for the Eastern District of New York:

The answer of Shepard & Morse Lumber Company, claimant of the barkentine Windrush, as proceeded against upon the libel of John Hardy and others, in an alleged cause of action for wages, alleges as follows:

First. The claimant admits the allegations of the first article of the libel as of the date of filing of said libel.

Second. The claimant admits the allegations of the second article of the libel.

Third. The claimant admits the allegations of the third article of the libel, except as to the amount of wages to be paid John Broather, and alleges that the same was not \$25, but was \$20 per month.

Fourth. The claimant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations of the fourth article of the libel, except that it admits that the libellants went on board said vessel.

Fifth. The claimant denies each and every allegation of the fifth article of the libel.

Sixth. The claimant denies each and every allegation of the sixth article of the libel.

As to the second alleged cause of action,

Seventh. The claimant denies each and every allegation of the seventh article of the libel, except that it admits, on information and belief, that there was paid to each of the libellants or 8 persons on their behalf at Buenos Ayres an amount equal to one month's wages in advance of the time when the libellants earned wages on the barkentine Windrush.

Eighth. The claimant denies that the libellants are entitled to pay for waiting time, and denies each and every allegation of the eighth article of the libel.

Ninth. The claimant admits the allegations of the ninth article of the libel.

Tenth. Further answering, the claimant alleges, upon information and belief, that if any wages were paid in advance at Buenos Ayres

the same was done upon the advice and direction of the American Consul at Buenos Ayres and at the express request of the libellants; that an amount equal to all wages claimed due by the libellants in excess of the wages actually paid them at New York on or about July 15, 1916, was on said date deposited with the United States Shipping Commissioner at New York; that on July 27, 1916, the testimony of certain of the libellants was taken by their proctor, after which the claimant promptly offered to pay the libellants an amount equal to one month's wages as claimed by them, which offer was refused by the libellants on whose behalf demand was made for a further payment of \$1.33 per day for seventeen days for each of the libellants; that the amount of wages claimed by the libellants in this suit, with legal interest, or a total sum of \$236.57, was duly tendered to the libellants on August 25, 1916, and was refused; that an amount equal to the wages claimed by the libellants, with legal interest, amounting to the total sum of \$239.23, has been or is about to be on November 1, 1916, deposited in the registry of this court and tendered to the libellants pursuant to Admiralty Rule 36 of this Court; that such tender is without prejudice to the claimant's defenses to the suit of the libellants, and that the claimant denies any and all liability to the libellants.

Wherefore, the claimant prays that the libel may be dismissed, with costs, and for such other and further relief as may be just.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

STATE OF NEW YORK,
County of New York, ss:

Otis N. Shepard being duly sworn, deposes and says, that he is an agent of Shepard & Morse Lumber Company, the corporation claimant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are reports received from the master of the barkentine Windrush; and that the reason why he makes this verification is that the claimant is a corporation, none of whose officers is within the City of New York.

OTIS N. SHEPARD.

Sworn to before me this 1st day of November, 1916.

[SEAL.]

ROSCOE H. HUPPER,
Notary Public, New York Co., No. 302.

10

Stipulation.

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER COMPANY,
Claimant.

It is stipulated between the proctors for the respective parties that this suit may be tried on the pleadings and on the following stipulation in addition to any other competent evidence already taken by either party and for the purpose of this suit it is stipulated with the same effect as if witnesses were called, subject to objections as to relevancy or materiality, as follows:

First. That the articles which the respective libellants signed before the American Vice-Consul at Buenos Ayres, or a copy thereof, shall be received in evidence, and said articles shall be deemed true and correct as to the wages of said libellants and advances made, and as to all matters stated therein.

Second. That the testimony of the libellants herein speaks for itself, but that all of those not called would testify that before securing and as a means of securing employment on the barkentine Wind-

rush, it was necessary for him to sign a receipt or advance note
11 for one month's wages and deliver the same to a shipping master at Buenos Ayres, which, when delivered, was an assignment out of wages of the amount therein named, and that each of the libellants did sign such a receipt or advance note and delivered the same to one Tommy Moore, or his representative.

Third. That the master would testify shipping of seamen for sailing vessels at Buenos Ayres is controlled by shipping masters, among whom was the aforesaid Tommy Moore; that the master of the barkentine Windrush, if called, would testify that it would have been impossible to secure a crew for said ship at Buenos Ayres except by agreeing to pay one month's wages in advance; that the advance notes which the respective libellants signed at Buenos Ayres were presented to the American Vice-Consul at Buenos Ayres before the libellants signed the articles, and the advances were noted on said articles by said Vice-Consul; that said master was then directed by said Vice-Consul, in the presence of the respective libellants, to honor said receipts or advance notes and to pay the same on account of the wages of the respective libellants, and that pursuant to said direction there was paid to Tommy Moore, or his representative, the amounts named in the aforesaid advance notes; that the amounts thus paid at Buenos Ayres were deducted from the wages of libellants that, except for such payment, would have been due to the respective libellants when they were discharged at New York; that said master would testify that he received neither directly nor indirectly any part of

said advances; that the articles were read to the respective libellants by
 said Vice-Consul before they signed, and that the libellant
 12 Paul Udson told said master that he wanted to get away from
 Buenos Ayres as soon as possible; that he might be arrested
 or prevented from leaving if he went to the consulate to sign the
 articles, and beseeched said master to assist him, and arranged that
 the articles should be signed for him by one Anderson.

Fourth. That the American Vice-Consul at Buenos Ayres, when
 he instructed the master of the barkentine Windrush to honor said
 advance notes, was acting in the performance of his regular official
 duties; that the transactions herein mentioned took place on shore
 and on shipboard at Buenos Ayres, Argentine Republic, as indicated
 by the testimony and by the facts as stipulated.

Fifth. That Sections 236 and 237 of the Consular Regulations of
 the United States, duly published by the State Department, provide
 as follows:

"236. No advance wages.—Except in the case of whaling vessels,
 it is not lawful to pay any seaman wages before leaving the port at
 which such seaman may be engaged in advance of the time when he
 has actually earned the same, or to pay such advance wages to any
 other person, or to pay to any one except an officer authorized by act
 of congress to collect fees for such service, any remuneration for the
 shipment of a seaman. If any such advance wages or remuneration
 shall have been paid or contracted for, the consul, in making up the
 account of wages due the seaman upon his discharge, will dis-
 13 regard such advance payment or agreement and award to the
 seaman the amount to which he would be entitled if no such
 payment or agreement had been made. Nor should consuls permit
 the statute to be evaded indirectly, as by part payment in advance
 and then stating rate of wages too small. R. S., secs. 4532, 4533;
 23 Stat. L., 55, sec. 10; 24 Id., 80, sec. 3; 27 Fed. Rep., 764."

"237. Advances to seaman shipped in foreign ports.—The ship-
 ment of seamen in foreign ports cannot be considered as within the
 intention, and hence not within the proper construction, of the act
 referred to in the next preceding paragraph. The final clause of the
 act, which declares that this section shall apply as well to foreign
 vessels as to those of the United States, and that in case of violation
 a clearance shall be refused them, is a clear indication that congress
 did not in this section refer to the shipment of seamen in foreign
 ports, but had in view acts done in the United States alone. The
 provision of the statute as to payment of advance wages is not in-
 tended to apply to seamen shipped in foreign ports. In the settle-
 ment of wages due seamen in such cases, therefore, consular officers
 will take into account what has been paid in advance. 22 Fed. Rep.,
 734."

Dated New York, March 19, 1917.

SILAS B. AXTELL, *Proctor for Libellants.*

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Claimant.

14 JOHN HARDY, one of the libellants, having been duly sworn, testified in his own behalf as follows:

Direct examination.

By Mr. Axtell:

- Q. What is your name?
A. John Hardy.
Q. You are a seaman?
A. Yes.
Q. Where were you born?
A. In Ohio.
Q. How long have you been going to sea?
A. Eleven years.
Q. You know the bark Windrush?
A. Yes.
Q. Where did you join her?
A. In Buenos Ayres.
Q. What were your wages?
A. \$25.00 a month.
Q. In what capacity were you on the bark?
A. As A. B.
Q. Do you know, Tommy Moore, a boarding house keeper?
A. Yes.
Q. Were you stopping in his house?
A. Yes.
Q. How long?
A. Two days.
Q. Did you go to work on the Windrush?
A. I signed on the Windrush, yes.
Q. Did you work on her?
A. No, not before I signed.
Q. Did you work afterwards?
A. Yes.
Q. How long?
A. Two months and three days.
Q. When did you come aboard her?
A. The 10th of May, 1916.
Q. When did you leave her?
A. The 13th of July.
Q. You left the boat the 13th of July?
A. Yes.
Q. At what port?
A. At the Port of New York.
Q. Did you receive your wages in full at that time?
A. No.
Q. How much money did you receive?
A. \$19.00 and some odd cents. I forget just how much exactly.
15 Q. Did you receive any slops or advances?
A. Yes.

- Q. How much?
A. \$5.05.
Q. What was that in?
A. Clothing and tobacco.
Q. What were the pieces of clothing?
A. I got a pair of slippers.
Q. How much did they charge for that?
A. Seventy-five cents.
Q. What else?
A. Tobacco.
Q. What else?
A. Oilskins.
Q. The whole thing amounted to how much?
A. \$5.05.
Q. Did you get any cash from the captain?
A. Yes.
Q. How much?
A. \$5.00.
Q. Where did you get that?
A. In New Jersey.
Q. Before you were paid off?
A. Yes.
Q. You received from the captain in cash and slops, how much?
A. \$10.05.
Q. Then you received \$19.00?
A. I don't exactly remember. It was \$19.00 and \$5.00 I got from the skipper in New Jersey.
Q. How much did you receive back slops and cash including what you got in New York and paid off?
A. I don't remember exactly.
Q. Was it over \$26.00?
A. I could not have gotten \$26.00.
Q. Approximately how much did you get?
A. About \$25.00 and some odd cents.
Q. You were aboard the ship two months and three days?
A. Yes.
Q. Your wages were \$25.00 a month, then your wages would be for that period \$52.49?
A. Yes.
Q. Of that sum you received about \$25.00?
A. Yes.
16 Q. What was done with the rest of the money?
A. He claims _____

My Mr. Hupper: I object to this; it is not what he claims, but what actually is.
A. (Continuing:) He claims that he gave us advance money in Buenos Ayres.
Q. Who gave you advance money in Buenos Ayres?
A. I suppose it was the captain who gave the advance money.

Tommy Moore made me sign this advance check. I signed the check in the house, in Tommy Moore's house.

Q. What did it say on that slip?

A. The only thing that I saw was \$25.00, the rest was blank.

Q. Did it say what it was for?

A. It didn't say.

Q. How much did you owe Moore?

A. For 2 days' board.

Q. Had you been aboard the ship before you went to Moore's house and were the other men aboard the ship?

By Mr. Hupper: I move to strike out "were the other men aboard the ship."

Q. Did you tell the captain how long you had been in Moore's house?

A. No.

Q. Have you ever had any conversation with the captain about this advance?

A. No, we had a little trouble in the Commissioner's office?

Q. What conversation took place at the Commissioner's?

A. About the advance money.

Q. What was it?

A. We wanted the advance money. The captain said he wouldn't give any advance.

17 Q. Why?

A. Because he paid the advance money in Buenos Ayres.

Q. What did he say to the Commissioner about it?

A. He said we wouldn't get any more. That was an end to it. \$25.00 was paid in Buenos Ayres.

Q. Where did this conversation take place?

A. At the desk at the Commissioner's.

Q. On what day?

A. On the 13th or 14th.

Q. On the same day you got your money?

A. Yes.

Q. Did Moore give you any money?

A. No.

Q. Did you ask him for any?

A. Yes.

Q. He wouldn't give it to you,

A. No.

Q. It cost you \$25.00 for 2 days' board?

A. Yes.

Q. How much would 2 days' board amount to?

A. It's 12 pesos a week.

Q. How much is a peso?

A. 2 pesos and 39 centavos for one American dollar.

Q. How many centavos in a peso?

A. 100.

Q. Then it would be at the rate of \$.75 a day for board?

A. Yes.

Q. Then you owed Tommy Moore \$1.50?

A. Yes.

Cross-examination.

By Mr. Hupper:

Q. On what ship did you go to Buenos Ayres?

A. Bark Stanley.

Q. From what port?

A. Cardiff.

Q. What date did you sail on her?

By Mr. Axtell: Objected to as being immaterial and move that it be stricken out.

18 Q. In what capacity?

A. As a b.

Q. What date did you arrive in Buenos Ayres?

A. I came from Montevideo.

Q. About what date did that ship arrive there?

A. March, I think.

Q. The 1st of March?

A. In the month of March.

Q. About what date was it?

A. The last of February.

Q. How long did you stay in Montevideo?

A. I didn't stay *that* at all, I went to Buenos Ayres.

Q. On the same boat?

A. No.

Q. What is the name of the boat?

A. One of the Michalovitch's liners.

Q. How long does it take to run down to Buenos Ayres?

A. Over night.

Q. You went down from Montevideo?

A. Yes.

Q. And you were in Buenos Ayres from about the 1st of March?

A. About a week. I stopped there about a week and engaged on the Tejua.

Q. Is she a bark?

A. Yes, a three masted bark.

Q. Where did you go with her?

A. South Georgia.

Q. Here in the States?

A. No, down in the Antarctic.

Q. What time did you get back to Buenos Ayres?

A. About 2 months later.

Q. What date would that be?

A. (Witness produces what purports to be a discharge, written on plain paper and bearing what purports to be signature of master of the ship. On the bottom is signed Buen Aires, 4th d e Mai, 1916, L. Johnessen Joier Ao Bark Tjùca.)

Q. What did you do in Buenos Ayres?

- 19 A. I went to Buenos Ayres to a place called the Shamrock.
Q. Did you spend any money there?
A. I paid a week's board, 14 pesos.
Q. Did you spend any other money?
A. Certainly.
Q. How much?
A. About all I had.
Q. What date did you ship on the "Windrush"?
A. On the 10th of May.
Q. You went before the Shipping Commissioner?
A. No, the American *Counsel*.
Q. You were shipped from there?
A. Yes.
Q. You signed articles?
A. Yes.
Q. At what rate of wages?
A. \$25.00.
Q. Were the articles read to you?
A. No.
Q. Did you hear them read?
A. No, I was outside.
Q. When did you sign them?
A. I was about the last one that signed, there was no one after me.
Q. Did you sign right inside?
A. Yes, inside.
Q. Before the Consul?
A. Yes.
Q. You knew what you were signing?
A. Yes.
Q. You say you signed a receipt for Tommy Moore?
A. I signed a note.
Q. That was at his house?
A. Yes.
Q. And that said \$25.00?
A. Yes.
Q. Do you read and write?
A. Yes.
Q. Well?
A. Yes.
Q. What nationality are you?
A. My people were Austrians.
Q. Do you usually read newspapers and books, etc?
A. Yes.
Q. How long?
A. Every chance I get.
Q. Do you generally read any receipt or any other papers before you sign them?
A. Yes.
20 Q. And I suppose you read the articles before you signed them?
A. I read the new law, the new Seaman's Law.

- Q. When?
A. In Buenos Ayres.
Q. That was before you signed articles? .
A. Yes.
Q. You read it through pretty carefully?
A. Yes, certain paragraphs of it.
Q. You understood what you were reading?
A. Yes.
Q. Did you look at these articles before you signed?
A. No.
Q. You signed the articles?
A. Yes, I signed articles but I didn't have them read to me.
Q. You can read?
A. Yes.
Q. You looked it over before you signed I suppose?
A. Yes, I suppose I did if I signed them.
Q. The articles were all filled out when signed them?
A. What do you mean?
Q. Were they all filled in?
A. The names were not filled in.
Q. Were the wages and the birthplace filled out before you signed?
A. I didn't notice that. I didn't ask any questions. He simply asked me if I understood, and I said yes.
Q. Understood what?
A. That I was signing.
Q. And you said yes?
A. Yes.
Q. And you signed?
A. Yes.
Q. Will you look at the articles here and tell me whether or not this is your signature?
A. Yes.

NOTE.—Witness identifies his signature as John Hardy on the 10th line on Page 2 of the articles made up at Buenos Ayres to which Consul certificates are attached. Same marked for identification.

- 21 Q. What date did you sail from Buenos Ayres?
A. On the next day.
Q. You didn't make any complaint, did you?
A. We didn't sail next day, yes we did.
Q. That is May 11th?
A. Yes.
Q. You didn't make any complaint or anything on the voyage, did you?
A. Nothing, but *or* course, there are complaints on every boat.
Q. Just ordinary ones, but you didn't complain about your wages, did you?
A. We were going to see the Commissioner up here and here get justice.

- Q. You didn't make any complaint before about your wages?
- A. No.
- Q. You were perfectly well satisfied?
- A. I was not exactly satisfied.
- Q. You signed and were satisfied and you understood, is that right?
- A. Yes.
- Q. How long have you been going to sea?
- A. 10 or 11 years.
- Q. Did you apply to this man, Tommy Moore, for a job on a vessel?
- A. Yes.
- Q. He told you he would get you one?
- A. Yes, he is a sort of a press-agent.
- Q. Tommy goes out with the runners and gets men to come to his house and by and by, he gets them a job on the ship, is that right?
- A. Yes.
- Q. Practically, everybody does that in Buenos Ayres?
- A. Yes, they have a *click*.
- Q. You mean there are a number of men like Tommy?
- A. They have 5 or 6 that work together.
- Q. They all work together?
- A. Yes.
- Q. You say there are 5 or 6 that work together
- A. Yes.
- Q. I suppose they control all the shipping in Buenos Ayres?
- A. Almost all. They don't control English ships.
- 22 Q. Where do they get their English sailors?
- A. English Sailors' Home.
- Q. Where were you staying most of the time?
- A. Do you mean where I lived?
- Q. Yes.
- A. At the Shamrock.
- Q. You were spending your time at the docks?
- A. No, around the streets. I was looking out for a job.
- Q. These runners have a good many sailors in their control, is that right?
- A. Yes.
- Q. They pick them all up when they come in there?
- A. Yes.

Redirect examination.

By Mr. Axtell:

- Q. The articles were not read over to you by the Consul, you say?
- A. No.
- Q. And you didn't read it yourself?
- A. No.
- Q. Although you can read?
- A. Yes.

Q. How were the articles presented to you for signature?

A. As they are there, open on this page, Page 2. (Counsel for libelant numbers pages of the articles from the beginning, which appears to consist of two sets of articles. In that connection, it is noted that the page referred to as Number 2, is now page No. 6.)

Q. How were the articles presented to you, open at pages 6 and 7?

A. Yes.

Q. Was page 5 or page 1 turned over to you so you might read it?

A. No, when I saw it, it was just as it is.

Q. Where did you sign it, whereabouts were you?

A. In the office of the Consul.

Q. Was the Consul present?

A. Yes.

Q. What is his name?

A. I don't know.

Q. What sort of a looking fellow is he?

A. A slight built man.

23 Q. Describe him further, if you can? Did he wear glasses?

A. I didn't notice.

Q. Light or dark?

A. Light.

Q. Was he the Consul or some clerk?

A. I don't know.

Q. Do you know his name, was it John S. Calvin?

A. I don't know.

Recross-examination.

By Mr. Hupper:

Q. Who was there besides you in the office, when you signed?

A. A runner.

Q. What is his name?

A. Benson.

Q. Were any of the other sailors there who signed on the "Wind-rush" at the same time?

A. Yes.

Q. They were in the office?

A. Yes.

JOHN BROEDKER, co-libelant herein, having been duly sworn, testified in his own behalf, as follows:

It is stipulated that the testimony taken in this action brought in the United States District Court, District of New Jersey, may be used by either party in any action subsequently brought in the United States District Court, Eastern District of New York, providing the action in New Jersey is discontinued.

Direct examination.

By Mr. Axtell:

- Q. How old are you?
A. 26.
Q. Where were you born?
A. Amsterdam.
Q. You are not a citizen of the United States, is that right?
A. No citizen.
24 Q. Do you know the "Windrush"?
A. Yes.
Q. Where did you join her?
A. In Buenos Ayres.
Q. At what wages?
A. \$20.00 a month.
Q. In what capacity?
A. Ordinary seaman.
- It is stipulated on the record that witness signed May 10th and worked on the vessel until July 13th. It is stipulated that as to each of the other libelants that they signed articles before the Consul on May 11th, 1916, at Buenos Ayres, and worked on the ship until July 13th, date of the arrival in New York.
- Q. You received all of your wages due, except \$20.00?
A. Yes.
Q. \$20.00 you claim is still owing?
A. Yes.
Q. Is this your signature? (Referring to line 12, page 6 of the articles).
A. Yes.
Q. Were the articles read to you when you signed your name there?
A. Yes.
Q. They read the articles to you?
A. Yes.
Q. You speak English?
A. A little bit.
Q. Do you understand it?
A. Yes, a little bit.
Q. Was anybody there besides you when you signed?
A. No, I was the last one.
Q. Was the captain there?
A. Yes, captain and the Consul.
Q. Was the runner there?
A. Yes.
Q. Do you know Tommy Moore, the boarding-house keeper?
A. I don't know him.
Q. Did you sign your name on any paper?
A. Yes, captain told, do you want advance. I said yes.

Q. You signed the advance?

A. Yes.

Q. How much?

A. \$20.00.

25 Q. Where did you sign that paper?

A. At the Consul.

Q. You signed the advance in the Consul's office?

A. Yes.

Q. What was on the paper?

By Mr. Hupper: I object to that, as the paper is the best evidence.

By Mr. Axtell: Produce it.

By Mr. Hupper: We haven't it.

By Mr. Axtell: Where is it?

By Mr. Hupper: We know nothing about it.

By Mr. Axtell: Then the paper is lost?

By Mr. Hupper: We don't know anything about it.

Q. Where is the paper that you signed?

A. I don't know.

Q. Who did you give it to?

A. I didn't give it to anybody.

Q. Who was present when you signed it?

A. The captain.

Q. Anybody else?

A. Yes, one more.

Q. Who was this other man?

A. I don't know.

Q. Had you ever seen him before?

A. Yes, I seen him in the street.

Q. Did you ever see him at Moore's house?

A. I didn't go there.

Q. Who held the paper while you signed it?

A. The Consul.

Q. Which paper are you talking about?

A. This one.

Q. Is this the paper you have been talking about all the time?

(Pointing to articles).

A. No, there was another paper there.

26 Q. What did you do with the other paper for the advance?

A. I don't know. Captain told me I was to get advance.

Q. Did the captain keep it?

A. Yes, captain give it to Consul.

Q. Is that your answer?

A. Yes.

Q. This other paper, not this one, the other paper, (referring to the articles) did captain give that paper to Consul?

A. Yes.

Q. Did you get any of that \$20.00?

A. No.

Q. Not any?

- A. No.
Q. Had you been living in Tommy Moore's boarding house?
A. No.
Q. Had you been living in any other boarding house?
A. No.
Q. Do you owe Tommy Moore any money?
A. No.
Q. Had you ever been living in his house?
A. No.
Q. Didn't you say that you had signed this receipt at his house?
A. No, on the street.
Q. You were there in Tommy Moore's house?
A. Yes.
Q. What were you doing there?
A. I was going on the ship, on the "Windrush" and we couldn't get a job on the ship. Somebody told me I must go to Tommy Moore.

By Mr. Hupper: I object to what somebody told him, unless he can identify the person.

- Q. Who told you?
A. It was Hardy, the American fellow.
Q. He told you you would have to go to Tommy Moore's house?
A. Yes.
Q. Did you see the captain that day?
A. No.
27 Q. Did you see any of the officers of the ship that night?
A. No.
Q. You went to Tommy Moore and you got a job?
A. Yes.
Q. You didn't owe Tommy Moore any money at all, did you?
A. No.
Q. Where had you been before this ship?
A. On the Tijuca.
Q. Were you with Hardy on the Tijuca?
A. Yes.
Q. Where had you been stopping from the 4th of May until the 10th of May?
A. I was paid off two days before I got a job on this ship.
Q. Have you got your discharge?
A. Yes.
Q. Let me see it?
A. I haven't it with me. It is in my house.
Q. What house?
A. Hoboken.
Q. What number?
A. 194 Sixth Street, Hoboken.
Q. That is where you are stopping now?
A. Yes.

Cross-examination.

By Mr. Hupper:

- Q. What day were you paid off from the Tjuca?
A. I don't know.
Q. Were you paid off same day as Hardy?
A. No, Hardy before me.
Q. You stayed there after Hardy?
A. Yes.
Q. Where did you stay after you went ashore at Buenos Ayres
after you were paid off from the Tjuca?
A. I was around spending my money.
Q. Where did you spend this money?
A. I was going around.
Q. Did you spend all your money?
A. No, not all. I had 12 pesos left when I got a job.
Q. You were at Tommy's house?
A. I know where the house is.
Q. Had you ever been there before?
A. No.
Q. Is this the first time you were in Buenos Ayres?
A. Yes.
28 Q. Did you sign any paper for Tommy?
A. No.
Q. Did Tommy ask you to sign any paper?
A. No, but Tommy told "do you want job," I said "yes."
Q. Is that all?
A. Yes.
Q. Did Tommy say he was going to charge you something for
getting you a job?
A. I don't understand what Tommy said.
Q. Did he say something you didn't understand?
A. He said something, I don't know what he said.
Q. Was Hardy there at Tommy's when you were there?
A. No, not Hardy, another fellow.
Q. Is he outside?
A. No, he has gone out with the "Kallamares." His name is
Fred.
Q. Did Fred sign some paper for Tommy?
A. I don't know.
Q. Did you get a job through Tommy?
A. Yes.
Q. Tommy told Fred he was al-right and he would get him a job?
A. Yes.
Q. He told you the same thing?
A. Yes. He said I would get a job all right.
Q. Is that what he said?
A. Yes.
Q. Did you pay Tommy any money?
A. No.
Q. Did you give him anything?

- A. No.
Q. Didn't you promise him anything?
A. No. I got nothing to do with Tommy.
Q. Except that you got a job through him?
A. Yes.
Q. What time of the day was it that you signed these articles at the Consul's office?
A. 4 o'clock or 3 o'clock.
Q. You have said something about another paper that you signed there, what was that?
A. This paper (referring to articles) and another one for advance.
- 29 Q. Did the Consul hand you that paper?
A. Yes.
Q. And you signed it before him, did you?
A. Yes. Consul say "you sign paper, you want advance?" I said "yes."
Q. Then the Consul handed you this paper?
A. Yes and I put my name on it.
Q. You handed it right back to the Consul?
A. Yes.
Q. Did it say \$20.00 on that?
A. Yes.
Q. Did you tell the Consul that you wanted to pay Tommy some money?
A. No.
Q. You didn't tell him anything about it?
A. Captain ask "do you want an advance" and the Consul talk to me and I said "yes."
Q. You said "yes," you did?
A. Yes.

PAUL UDSON, one of the libelants herein, having been duly sworn, testified as follows:

Direct examination.

By Mr. Axtell:

- Q. What is your name?
A. Paul Udson.
Q. You are a seaman?
A. Yes.
Q. What nationality?
A. Holland.
Q. Are you a citizen?
A. No.
Q. How long have you been going to sea?
A. 15 years.
Q. Do you know the "Windrush"?
A. Yes.

Q. You joined her the same as the other men on May 10th and left here on July 13th?

A. Yes.

Q. You got all your wages except \$25.00, is that right?

A. Yes.

Q. One month's advance?

A. Yes.

Q. Did you sign a paper down there?

A. No.

Q. Did you sign the articles?

A. No, my name is not on those articles.

30 Q. Why didn't you sign the articles?

A. I was on board and asked the captain for a job and he said "all right, start tomorrow." I took my clothes in the morning and the chief mate said "You can't turn to." The captain wanted to see me, then I went to the captain. He said you have to go to Tommy Moore. I said "What about him?" He said he ships for the company.

Q. Did you go to see Tommy Moore?

A. Yes.

Q. The same day?

A. Yes.

Q. What day did you go aboard the ship?

A. Night of the 8th of May.

Q. What date did you go to see Tommy Moore?

A. On the 9th.

Q. What did you do at Tommy Moore's house?

A. I said to him "The captain sent me here." He said "all right, you belong to the crew then."

Q. Did you sign any papers for Tommy Moore?

A. No.

Q. Did you sign any advance?

A. No.

Q. You never signed the articles?

A. No.

Q. Didn't your name appear on the articles of the ship at all?

A. No.

Q. Whose name does appear on the ship where yours should appear?

A. I don't know, ask the captain.

Q. Did the captain tell you about any man that didn't ship that had signed?

A. Captain told me I can't sign on. I said "why not?" He said "we know all about it." I said "you don't know me I just come to Buenos Ayres." He told me to sign in any other name. I said I can't do this. I can't make a liar to the Consul, he know me. He sent another man to sign in my place.

Q. Who signed in your place?

A. I don't know.

Q. You never signed the articles?

A. No.

31 Q. Did you get any money from Tommy Moore?
A. No.

Q. Did the captain give you any money?
A. No.

Q. What wages have you received from the ship?
A. Only slops.

Q. How much slops?
A. About \$7.00 and some cents.

Q. How much money did you get in New York?
A. \$16.00 and a couple of cents.

Q. Did you get anything besides that at all?
A. No.

Q. Was anybody else present when the captain told you to go to
Tommy Moore?

A. Yes.

Q. Who?

A. Hardy and the other fellow.

Q. You mean the man who testified?

A. He heard the captain say in the Consul's office "where is that
fellow that signed for the other man's place."

Cross-examination.

By Mr. Hupper:

Q. When did you arrive in Buenos Ayres?
A. 10 days before I go on the "Windrush."

Q. You were paid off on May 8th from the "Santa Cecilia" (refer-
ring to what purports to be discharge from the "Santa Cecilia")?

A. Yes.

Q. Did you go up to Tommy Moore at Buenos Ayres?

A. No, I went on board and asked for a job.

Q. Who did you ask for the job?

A. The captain.

Q. Were you ever on the "Windrush"?

A. Yes.

Q. When?

A. On the 18th of November, 1915, at New York.

Q. Where did you go then?

A. St. John's.

Q. Did you desert at St. John's?

A. Yes.

32 Q. What ship did you go then?

A. On a schooner.

Q. Where did you join the "Santa Cecilia"?

A. In New York.

Q. Who signed these articles in your place?

A. I don't know. The Consul said I can't sign, he said "you can't
sign."

Q. Who said you can't sign?

A. The captain.

Q. What day was that?

- A. The same day we signed on.
Q. May 10th?
A. Yes.
Q. Did you send somebody up in your place?
A. No, I didn't send up.
Q. Can you read?
A. A little bit.
Q. If you saw that man's name, could you recognize it?
A. No.
Q. Will you look over these names and see if you see the man's name who went up in your place?
A. I think it was T. Anderson.
Q. Did you sign off at New York?
A. No.
Q. Were you paid off before the Shipping Commissioner?
A. Yes.
Q. Did you sign anything then?
A. I signed for the money we had coming, \$16.00. I signed my name.
Q. What name did you sign?
A. Paul Udsen.
Q. That was at the Shipping Commissioner's office down at the Battery?
A. Yes.
Q. Did you ever desert from any other ships besides the "Windrush"?

By Mr. Axtell: Objected to.

- A. One.
Q. Were you ever punished for deserting?
A. No.
Q. Never been in jail?
A. No.
Q. Do you know Tommy Moore?
A. Yes.
33 Q. Did you ever talk with Tommy?
A. He started to talk with me. He said "Are you the fellow that came on the vessel?"
Q. What did you say?
A. I said, "yes, that is me."
Q. What did he say after that?
A. He walked away.
Q. Is that the last you talked with Tommy?
A. No.
Q. Did you know any of Tommy's runners?
A. No.
Q. Were you anxious to get back to the United States?
A. Yes.
Q. Didn't you ask Tommy or one of his runners to get you a job on this ship?

A. No, I asked the captain and the captain sent me to Tommy.

Q. Did you go to Tommy?

A. Yes. I go to Tommy he said "all right, captain sent you, you stay on board." He said "come in my house." I said "I sleep on board the ship." He wants me to sleep and eat in his house. The captain said I can't sleep aboard.

Q. Did you tell Tommy you better have somebody sign in your place?

A. Runner told him.

Q. This man was Anderson on Page A of the articles?

A. I don't know, it must be.

Q. Did you beg the captain to take you on this trip?

A. Yes.

Q. You wanted to go back to the United States?

A. Yes.

Q. You know the name of this runner of Tommy's that you were talking with?

A. No.

Q. What was at the Consul's office?

A. Yes.

Q. The runner was not aboard the ship?

A. Before we went out, he was there.

34 Q. When you talked with the runner, that was in the Consul's office not in the ship?

A. Down in the street before the Consul's office.

Q. The captain was not there?

A. The captain just came around when we were finished.

Q. The captain was not talking with you then?

A. Yes.

Q. You mean he talked with you after he came around?

A. He said "where is that man who signed for him?" He said "that is the one," pointing.

Q. That is the first time you were talking with the runner?

A. Yes.

ARTHUR GOLDSTEIN, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?

A. Arthur Goldstein.

Q. What were you on the Windrush?

A. Cook.

Q. How much a month?

A. \$40.00.

Q. You joined her May 10th and left July 13th?

A. No I had my wages start sooner because I signed a few days back.

- Q. Is your name on the articles, referring to claimant's Exhibit I?
- A. Yes.
- Q. Point out your signature?
- A. Witness points to line 1, page 6.
- Q. That's your signature?
- A. Yes.
- Q. Where did you sign it?
- A. Before the American Consul in Buenos Ayres.
- Q. Was the Consul present?
- A. Yes.
- Q. Did he read the articles to you?
- A. No.
- Q. Did he tell you what they were?
- A. He didn't say anything.
- 35 Q. Did he ask you whether you understood them?
- A. No.
- Q. Did you sign any other paper besides these articles?
- A. No.
- Q. Did you ever sign an advance note?
- A. No.
- Q. Do you know Tommy Moore?
- A. Yes, I have been staying in his house.
- Q. For how long?
- A. Three or four days.
- Q. Did you owe him any money?
- A. Yes.
- Q. How much?
- A. I don't know, but I'll tell you how he got his money out of me.
- Q. How did he get it?
- A. I got a job on board the ship by the mate; captain wasn't on board when I came there and mate told me cook was on the drunk and told me to try to get the job if I wanted it. I started to work, I don't know how long, between six and eight weeks; close on to two months.
- Q. How much a month?
- A. I was supposed to get \$45.00 a month.
- Q. And board?
- A. Yes.
- Q. Did you sleep on board?
- A. Yes. Instead of captain paying me every Saturday night, this boarding master came on board and paid me and took part of my wages out every week. Whatever I owed him I had to pay ten or fifteen times over again.
- Q. Did you see the captain pay your wages to him?
- A. No, but I think the captain got his share out of it every week.
- By Mr. Hupper: I object to the answer of the witness.
- By Mr. Axtell:
- Q. How much money did you get on Saturday night?
- A. I was supposed to get 22 or 23 pesos.

36 Q. What did you get?

A. Sometimes 16, sometimes 12, sometimes 14.

Q. Did you stay in Tommy Moore's boarding house during this time?

A. No.

Q. Did you owe Tommy Moore anything?

A. Yes, but that was paid in one week.

Q. How much did you owe him?

A. He never made up a bill; he didn't tell me I owed him anything; he simply took money.

Q. When was these three or four days that you stayed at his house?

A. Before I went on the ship.

Q. Before you went to work by the day?

A. Yes.

Q. At the time you signed articles, was there anything owing to you for wages earned ashore?

A. Yes for a few days and the captain told the Consul to date back on the articles.

By Mr. Hupper: I move to strike out the answer as not responsive to the question.

By Mr. Axtell:

Q. On what day did you sign?

A. I cannot remember.

Q. How long before the other men signed?

A. One or two days before.

Q. Articles say May 7th, is that the day you signed?

A. No, wages started on the 7th; my wages were put back two or three days.

Q. Assuming the other men signed on the 10th or 11th of May, would you state on that day you did sign?

A. We were paid every Saturday night and I believe there was three days coming to me and captain told the Consul to date it back.

Q. Did you hear the captain tell Consul to date it back?

A. Yes.

37 Q. How much money did you get when you came to New York?

A. I don't remember exactly, I think \$43.00.

Q. About \$43.00?

A. Yes.

Q. Did you get any tobacco during voyage?

A. No, only \$5.00 when I got to New York.

Q. Then how much did you get before the commissioner?

A. \$43.00 but I don't know if that \$43.00 includes this \$5.00 or not.

Q. If he does then you got about \$38.00 before the commissioner?

A. Yes.

By Mr. Hupper: I object to all this testimony on the ground that records in Commissioner's office will show just what the witness got.

Q. Now you said, I believe, that you didn't sign any advance note or paper other than the articles?

A. Yes that's all I signed.

Q. Did you ask the captain for this advance?

A. I told captain that I would like to have some advance and runner was in Consul's office and he said "we must have a month's advance or we cannot let him go."

Cross-examination.

By Mr. Hupper:

Q. You were on this vessel about six weeks while in port?

A. Close to two months.

Q. About that time?

A. Yes, all the time she was there.

Q. She was discharging and loading cargo?

A. Yes.

Q. How many men on board?

A. Sometimes 4, sometimes 5.

Q. What vessel did you go to Buenos Ayres on?

A. Norwegian vessel; I forget the name.

38 Q. When did you arrive there?

A. About one week before I went to Tommy Moore's.

Q. How long had you been living at Tommy Moore's?

A. Three or four days.

Q. Did you pay your board when you left?

A. On Saturday night he took \$5.00 out of me, sometimes more.

Q. What were your wages a week?

A. I think \$45.00 came to about 23 pesos a week.

Q. Did Tommy Moore get you this job?

A. No, he told me to go down and see if they needed a cook. After that I went down and it happened that the cook was drunk and they wanted some one in his place.

Q. Mate told you to turn to?

A. Yes, captain wasn't on board at the time.

Q. Now then before you came on the ship you were just going to work by her while she was in port?

A. Yes.

Q. Then they dated your wages back to May 7th instead of signing you on May 10th.

A. Yes. We got paid off on Saturday night and I signed on Monday or Tuesday and captain said he would date wages back.

Q. So your wages ran from two or three days before the others?

A. Yes.

Q. You read English, don't you?

A. Yes.

Q. You read newspapers and books?

A. Sure.

Q. You take an interest in reading, keeping posted on things?

A. Sure.

Q. How old are you?

- A. 49 years old.
Q. What is your nationality?
A. I was born in Germany and naturalized in Great Britain.
Q. You signed these articles?
A. Yes.
Q. You knew what you were signing, of course?
A. Yes.
39 Q. The Consul told you that these were articles?
A. Yes.
Q. You knew just what you signed?
A. Yes.
Q. Before you had signed articles you spoke with Tommy or his runner about the advance?
A. A. I never spoke about an advance, only in Consul's office. I asked the captain for an advance and he wouldn't give me one. He said it is too much and that he wouldn't run the risk. He asked the Consul about it and Consul said "that's done on your own risk."
Q. Did you sign a slip then?
A. No.
Q. Articles stated an advance, didn't they?
A. I don't know.
Q. You saw the articles before you signed?
A. I just put my name on.
Q. It was daylight when you signed?
A. Yes.
Q. What was it the runner said if you didn't get an advance?
A. He wouldn't let me go on ship.
Q. What did he mean?
A. Stop me from going and get some one else; they work hand and hand with the masters of the ships.
Q. Have you ever been to Buenos Ayres before?
A. Dozens of times.
Q. Do they do that down there?
A. Yes, on all ships except English, everybody else these crimps get hold of. They don't let anyone go on board a ship unless sailor makes an advance.
Q. Unless you make this advance they won't let you join, is that it?
A. Yes.

40 TEXAS O'BRIEN, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

- Q. How old are you?
A. 29.
Q. How long have you been going to sea?
A. 15 years.
Q. Do you know anything about the bark Windrush?
A. No.

- Q. Never heard of her?
A. No.
Q. Have you ever been to Buenos Ayres?
A. Yes.
Q. How recently?
A. Between the 2nd and 15th of May.
Q. What year?
A. This year, 1916.
Q. What were you doing there?
A. Well, I was mostly looking for a boat to come home.
Q. How did you get there?
A. I went to the American Consul and told him I was left there by the Yacht Cypress and go a job on the steamship called — of the New England Coal & Coke Co.
Q. The Newton?
A. Exactly.
Q. How much a month?
A. Twenty-five cents a month.
Q. Is that all the wages you got on that ship?
A. I got \$25.00 from the captain and \$10.00 from the chief engineer.
Q. How long did you work on that ship?
A. I think 18 or 21 days, I don't know which. 21 days.
Q. You were a regular member of the crew?
A. Yes.
Q. Why was it that you were signed on at only 25 cents?
A. For the simple reason that there were so many people applying for jobs that they couldn't accommodate them. I came quick and ask for a job and they put me on.
41 Q. They paid you wages voluntarily?
A. No compulsory.
Q. You say that they only had to pay you twenty-five cents according to the articles. How did they happen to pay you \$35.00?
A. That was voluntarily.
Q. They didn't agree to pay it?
A. No.
Q. Where did they pay it?
A. New York City.
Q. At the end of the voyage?
A. Yes.
Q. Did you ever hear of Tommy Moore in Buenos Ayres?
A. No, sir.
Q. Did you go to any shipping agent to get the job?
A. No.
Q. Whom did you apply to?
A. American Consul.
Q. He sent you to the ship Newton?
A. Yes, he told me to go on the S. S. Newton.

Cross-examination.

By Mr. Hupper:

Q. How long were you in Buenos Ayres before you got this job at 25 cents?

A. Two weeks.

Q. You went on the yacht Cypress?

A. Yes.

Q. She went to Buenos Ayres and left you there?

A. Yes.

Q. You were ashore when she left. Ashore having a good time?

A. I don't know what you call it, but I didn't have a very good time after she left. She left previous to what she was supposed to sail.

Q. You didn't desert, you wouldn't do anything like that, would you?

A. Well, I can't say whether I would *not* not, if it didn't prove what I expected I would.

42 Q. Did you desert the Cypress?

A. No.

Q. She was entirely satisfactory?

A. She was perfectly satisfactory. I was left there with just the same clothes that I stand in, because for the simple reason that she sailed before she was supposed to.

THOMAS O'KEEPE, being duly sworn, deposes and says:

Direct examination.

By Mr. Axtell:

Q. You are a seaman by trade?

A. Yes.

Q. How old are you?

A. 42.

Q. How long have you been going to sea?

A. Sometime I go for a couple of weeks and then stay ashore again.

Q. You are an American citizen?

A. Yes, born in New Jersey.

Q. How long have you been going to sea?

A. Off and on 26 years.

Q. You don't know the bark Windrush, do you?

A. No.

Q. Have you ever been in Buenos Ayres?

A. Yes.

Q. How recently?

A. I went there about the 9th of September.

Q. This year?

A. Yes.

Q. What ship?

- A. My own.
Q. How did you get the job on the Iowan?
A. Through the American Consul.
Q. Did you pay any advance?
A. No.
Q. Did you pay any advance to anybody?
A. No.
Q. In what capacity did you join?
A. A. B.
Q. How much a month?
A. \$40.00.
Q. Were your wages paid in full?
A. Yes.
43 Q. Did you ever hear of Tommy Moore?
A. Yes, I knew the old fellow and I know the young one.
Q. Who are they?
A. Shipping masters in Buenos Ayres. I know those people well; they shipped me out once about 20 years ago. Old Tommy Moore is dead now.
Q. Who runs the business?
A. His son and another fellow by the name of Bergenson.

Cross-examination.

By Mr. Hupper:

- Q. How long had you been in Buenos Ayres before sailing on the Iowan?
A. About five days.
Q. You had sufficient money with you?
A. I didn't have any.
Q. Where did you stay for five days?
A. At Frank Brown's. The American Consul put me there.
Q. Did you pay him?
A. No, the American Consul did.
Q. Do you know how much?
A. Two pesos a day.
Q. How much is that?
A. \$11.45 to \$5.00 American money.
Q. And he paid him two of those?
A. Yes.
Q. You say you knew Tommy Moore quite a few years ago?
A. Yes.
Q. Had you seen him lately?
A. No, he is supposed to be dead.
Q. Did you see the young fellow when you were in Buenos Ayres this last time?
A. Yes.
Q. They do a big business shipping men?
A. Yes, mostly for schooners, not for steamships.
Q. Not for steamships at all?
A. No.

44 United States District Court, Eastern District of New York

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," Her Tackle, Apparel, etc.

Testimony of Fred Neilsen and William Robur, taken de bene esse before Maurice K. Wise, a notary public, on the 14th day of September, 1916, at No. 1 Broadway, Borough of Manhattan, City of New York.

Silas B. Axtell, for libelants;
Burlingham, Montgomery & Beecher, for claimants;
Mr. Cormack, of counsel.

Signing, certification and filing of minutes is hereby waived.
Copy of deposition to be served on proctors for claimants. Minutes to be a taxable cost; same being taken by Lillian Zimmerman, a stenographer.

45 FRED NEILSON, being sworn, by Maurice K. Wise, a notary public, testifies as follows:

Direct examination.

By Mr. Axtell:

Q. You were a member of the crew of the Windrush?

A. Yes.

Q. In what capacity?

A. A. B.

Q. When and where did you join her?

A. In Buenos Ayres on the 10th day of May I believe.

Q. Same date as other men?

A. Same date.

Q. Did you sign before the Consul?

A. Yes.

Q. How much a month?

A. \$25.00.

Q. Did you have any advance?

A. No.

Q. Did you sign for an advance?

A. No.

Q. Are you positive?

A. Yes.

Q. Didn't you sign an advance note for a month's pay?

A. No.

Q. How much did you receive for that voyage from the master?

A. Around \$20.00.

- Q. How much was deducted from you- wages by the master?
A. He deducted \$25.00.
Q. What was that for?
A. I suppose he was taking the advance out.

By Mr. Cormack: I object to the conclusion of witness as to why the deduction was made.

- Q. What advance do you refer to?
A. He thought we got an advance but we never got any; he said he gave us an advance but we never got it.
Q. Are you positive you didn't sign any note?
A. Yes.
Q. Didn't you sign a note for Tommy Moore?
A. I signed a blank piece of paper. Just as I got in there, they had some kind of book there and nothing on it at all and he said if you want to take this ship you get \$25.00 a month but you got to sign so I signed. It was not an advance note or anything
46 like that. I don't know what it was.

- Q. Where did you sign that?
A. In Tommy Moore's house.
Q. Had you been sleeping in his house?
A. No.
Q. Get any meals there?
A. No.
Q. How did you happen to go there?
A. I got paid off on Monday from another ship and on Wednesday night I was sitting in a saloon in Elbhall and drinking a glass of beer and he asked me if I wanted a job.
Q. Who did?
A. I don't know.
Q. What did you do there?
A. I said yes, and he said "all right, be over here tomorrow morning."
Q. Where?
A. Tommy Moore's.

By Mr. Cermack: I move to strike out statement of witness as to what other man said as witness is not able to identify other man.

- Q. Did you see the other man there?
A. Yes.
Q. Same man you saw in the saloon?
A. Yes.
Q. Did you see Tommy Moore personally?
A. No.
Q. Did the Consul have this paper that you signed when you were there?
A. No.
Q. Did you hear any conversation between the captain and the Consul about this note?

A. The Consul said I could have \$25.00 advance and \$25.00 a month and he asked me whether I wanted to sign and I said yes. Then we signed and I said "what about an advance," and we saw the skipper coming from the Consul in an automobile and that was the last we saw of the skipper until we came on board.

Q. Did you ask for the advance then?

A. No. We thought the law is not supposed to give it
47 and he did not want to give it; or maybe he changed his mind.

Q. That is why you didn't ask for it?

A. Yes.

Q. When you came to New York did you sign off the articles?

A. Under protest.

Q. Did you make a demand on the captain for \$25.00?

A. Yes.

Q. And he refused to give it?

A. Yes.

Q. Then you put the case in my hands?

A. Yes.

Q. You are willing to accept the advance without any waiting time or other charge before suit was started?

A. Yes.

Q. Are you willing to accept wages now without waiting time?

A. No.

Q. Are you willing to accept it with interest at 6%?

A. No.

By Mr. Cormack: I object to this question as it is entirely immaterial.

Q. You have alleged in your libel that you claim waiting time under Section 4529 of the United States Revised Statutes?

A. Yes.

Q. You know the contents of that statute?

A. Yes.

Q. You claim one day's waiting time for every day you waited?

A. Yes.

Cross-examination.

By Mr. Cormack:

Q. Was this your first time in Buenos Ayres?

A. No, I have been down there since 1912.

Q. How many times?

A. I was sailing out from Buenos Ayres.

Q. Did you always secure your position through Tommy Moore?

A. Never.

48 Q. Did you ever pay anyone else for securing a job for you?

A. No.

Q. Who gave you the paper to sign at Tommy Moore's house?

A. Benson.

Q. What did he say the paper was?

A. Well I asked him, and he said "we want this so we will have all the names and you got to sign this if you want to go this afternoon."

Q. Was there anything written on the paper at that time?

A. No.

Q. \$25.00 didn't appear on the paper?

A. No.

Q. Anything at all written on the paper?

A. He put \$25.00 gold.

Q. Where did you stop in Buenos Ayres?

A. The Fonda.

Q. How much money did you have when you secured your position on the Windrush?

A. About \$25.00.

Q. How did you look for a job before you saw Benson in the cafe?

A. I wasn't looking for a job at all.

Q. Did you at any time ask anyone else to get you a job on the Windrush?

A. Yes. I asked sailor who was on board before and he shipped again that trip and I was going to skipper and he said it was no use of going to skipper, because they send them all to the boarding house.

Q. You never asked skipper for a job or went on the Windrush to look for it?

A. No.

Q. Were the articles read to you before you signed?

A. Yes.

Q. You knew that you were signing articles at the time you signed them?

A. Yes.

Q. Did you sign articles after the other men or before?

A. There were about 5 or 6 ahead of me.

Q. Was the Consul present when you signed?

A. I don't know the Consul; maybe he was there.

49 Q. You don't know Moore personally?

A. No.

Q. Was Benson in room when you signed articles?

A. Yes.

Q. Did you pay Tommy Moore anything?

A. No.

Q. Did you make any complaint because you didn't receive any advance before you left Buenos Ayres?

A. No.

Q. When did you first go on the Windrush after signing articles?

A. Next morning at 7 o'clock.

Q. You simply went on the Windrush before you started to work at 7 o'clock?

A. Yes. I went on board at 6 o'clock and started in at 7 o'clock.

Q. Did Benson say anything to you about paying him for getting you this job?

A. No.

Q. Is it customary to pay men when they get you a job in Buenos Ayres?

A. I don't know.

Q. Did you ever pay anyone other than Tommy Moore?

A. Yes, once.

Q. How much did you pay them?

A. Five crowns.

Q. Did you ever have any deduction made out of your wages to pay any men for getting job for you?

A. No, I have been sailing out of the States here and never had a cent taken off my wages.

Q. When you went to Tommy Moore did you know he was in the business of getting jobs for men on ships?

A. Yes.

Q. You understood at that time that you would have to pay him in case he secured job for you?

A. If he had said anything I would have given him a few dollars, but he never said anything so why should I?

Q. When the captain asked you in the Consul's office if you wanted an advance and \$25.00 a month, what did you answer him?

A. The Consul got hold of the articles and said "you men 50 get a month's advance and \$25.00 a month" and he asked us if we wanted to sign them and we said yes and captain never said anything about an advance.

Q. Consul said you would get an advance and \$25.00 a month?

A. Yes.

Q. After Consul said that you understood that you were going to get an advance?

A. Sure.

Q. You didn't ask for \$25.00 at any later time?

A. As soon as we were through the captain left and I didn't seem him until we came on board.

By Mr. Cormack: I move to strike out so much of the answer as relates to reasons why he did not later ask for an advance.

Q. How long was it from the time you signed paper in Tommy Moore's house until you signed articles?

A. About four hours.

Q. Did it appear on the articles that you signed, that you were to receive \$25.00 advance and \$25.00 a month?

A. I think so, but I am not sure of it, I wouldn't swear to it.

WILLIAM ROBUR, being duly sworn, deposes and says:

Direct examination.

By Mr. Axtell:

Q. You signed articles on the Windrush?

A. Yes.

Q. As A. B.?

A. Yes.

Q. Same time as other men?

A. Yes.

Q. At what wages?

A. \$25.00 gold a month.

Q. How did you get your job on the ship?

A. I asked the captain of the Windrush for a job.

51 Q. Did he give you one?

A. No, he said "go to Tommy Moore."

Q. Did you see the captain personally?

A. Yes.

Q. A short man?

A. Yes. Captain Roberts is his name.

Q. You have sailed on the vessel so you know him?

A. Yes, captain from Dunkney, a Norwegian bark, sent me over there. He was asking him for a job for me and captain of the Windrush told him that I could come on board there.

By Mr. Cormack: I move to strike out so much of the answer of the witness as relates to what the captain of the Dunkney said.

Q. Did you sign for an advance?

A. I went on board again and chief mate told me that captain went away and I met captain on the street and I asked him again for a job and he said "why didn't you go to Tommy Moore's house," and I said I haven't got anything to do with Tommy Moore, I don't know where he lives. Then he said "it is better that you go up there tomorrow morning and ask him if you can come on this ship."

Q. What did you say?

A. All right.

Q. Did you go up there?

A. Yes.

Q. When?

A. The same evening.

Q. Did you see Tommy Moore?

A. I didn't see Tommy Moore; I saw another fellow there.

Q. Did you ever see him again?

A. The morning I was there.

Q. Did you sign any paper?

A. When I was there for the first time he asked me if I wanted to go on the Windrush and I said "yes." He said "well, 52 be here tomorrow morning about 9 o'clock," and I said "all right." The next morning I came and he said "do you want to go on the Windrush" and I said "yes" and he said "we will go to Consul about 11 o'clock" and then some other fellows came and he called us in altogether and he said "here you have to sign."

Q. Did you sign at the same time this man Neilson signed?

A. Yes.

Q. What did you sign?

A. I don't know; it was a blank piece of paper with \$25.00 in gold on it.

- Q. Anything written in Spanish that you couldn't read?
- A. I don't know.
- Q. Was it in a book?
- A. He had a book in there and small piece of paper.
- Q. You signed it?
- A. Yes.
- Q. Then you went to Consul's office?
- A. Yes.
- Q. Were the articles read to you?
- A. Consul said "you fellow sign for \$25.00 gold and \$25.00 advance." That's all he said.
- Q. Did he read over the articles?
- A. No.
- Q. You knew what you were signing?
- A. Yes. I read them before that.
- Q. You read other articles?
- A. I read the articles from the United States.
- Q. You didn't read those articles before?
- A. No.
- Q. You never did read them?
- A. No.
- Q. Did the captain deduct money from your wages?
- A. No.
- Q. Did you get an advance?
- A. No.
- Q. Were you paid any money in Buenos Ayres by Tommy Moore or captain?
- A. No.
- Q. Get any board or lodging from Tommy Moore?
- A. No.
- Q. Any tobacco?
- A. No.
- Q. How much money did you receive in New York?
- A. About \$23.00.
- 53 Q. You worked on ship how long?
- A. About two months and four days.
- Q. How much money did the captain keep out of your wages?
- A. \$25.00.
- Q. Did he say what it was for?
- A. Advance.
- Q. Did you accept that?
- A. No.
- Q. Did you sign off articles?
- A. I signed, but I told the commissioner that I don't want the money and he said "you will get your rights any way."
- Q. Then you retained me to bring suit?
- A. Yes.
- Q. You signed papers here and you are claiming waiting time at the rate of one day's pay for every day you waited after 48 hours?
- A. For every day two days' waiting time.

Q. Are you now willing to accept what the company is now willing to pay you, \$25.00 with interest?

By Mr. Cormack: I object to this question as immaterial.

A. No. I want my \$25.00 and two days' pay for every day that I waited.

Q. You want to go to court on that proposition?

A. Yes.

Cross-examination.

By Mr. Cormack:

Q. How many times have you been in Buenos Ayres?

A. First time I went down there I lived there for two months.

Q. You didn't spend any time in Buenos Ayres looking for work?

A. No.

Q. You went from the Dunkey right on the Windrush?

A. No.

Q. Where did you stay in the meantime?

A. 2017 Mendoza Street.

54 Q. When you went to Tommy Moore you knew he was in the business of getting jobs for men on vessels?

A. No, that was the first time I went there.

Q. Did you understand that you were to pay Tommy Moore for getting you a job?

A. No.

Q. Did you pay Tommy Moore anything?

A. No.

Q. Did he state that if you didn't pay him anything then he would get advance from your wages?

A. No.

Q. When you signed articles it appeared that you received an advance, didn't it?

A. \$25.00 gold written on it, nothing else.

Q. Were you in the room when the articles were read to the other men?

A. Yes.

Q. You heard articles read to other men?

A. Yes.

Q. Were the Consul and captain present when you signed the articles?

A. Yes.

Q. Tommy Moore there?

A. No.

Q. Did any one say anything to you about receiving an advance when you signed the articles?

A. No.

Q. How long after you signed articles did you first go on the Windrush?

A. Next morning.

Q. When did you start work?

A. Next morning.

Q. You didn't expect to pay anything for obtaining your job on the Windrush, did you?

A. No, certainly not.

Q. How much money did you have when you signed articles on the Windrush?

A. About thirty pesos.

Q. What port did you sail from on your way to Buenos Ayres?

A. New York.

Opinion.

United States District Court, Eastern District of New York.

May 25, 1917.

PAUL NEILSEN et al.

vs.

SAILING SHIP "RHINE."

JOHN HARDY et al.

vs.

BARKENTINE "WINDRUSH."

Silas B. Axtell, for Libellants.

Burlingham, Montgomery & Beecher (Roscoe H. Hupper), for Claimants.

In the first case Paul Nielsen and nine other seamen sue for the recovery of wages claimed to be due them from the bark Rhine. It appears that they shipped on the American bark Rhine, at Buenos Ayres, Oct. 7, 1916, for a voyage to New York, at the rate of \$25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Ayres is controlled by certain shipping masters, to one of whom the libellants, in accordance with the usual custom and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buenos Ayres before the 56 libellants signed the articles, were by him noted on the articles and, in the presence of the libellants, directed to be paid on account of the wages of the respective libellants. It was further stipulated that in directing the master of the Rhine to honor such advance notes, the Consul was acting in accordance with Section 237 of the Consular Regulations of the United States. When the bark arrived at New York the libellants were paid the wages earned, less the \$25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of Section 10 (e) of the Act of March 4, 1915, entitled "An Act to Promote the Welfare of American Seamen in the

Merchant Marine of the United States," which declares such advances to be unlawful and of no effect.

The facts in relation to the case of the Barkentine Windrush differ from the above only in respect of the fact that the advance notes are not in evidence, but are noted on the articles.

The sole question involved is whether the statutory provision referred to applies to advances made by American vessels in foreign ports. The original enactment prohibiting advances dates from 1884 (Act of June 26, 1884, c. 121, §10). It was amended three times between that date and the Act of March 4, 1915 (namely, by the Act of June 19, 1886, c. 421, §3; the Act of Dec. 21, 1898, c. 28, §24; the Act of Apr. 26, 1904, c. 1603, §1), but without material change in any respect here involved.

In Patterson v. Bark Eudora, 190 U. S., 169, the Supreme Court of the United States held, in 1903, that the prohibition applied to advances made by a foreign vessel in an American port.

57 But there have been only two cases since the original enactment in 1884 which cover the issue now raised. In 1884 Judge Addison Brown held in the State of Maine, 22 Fed., 734, that this section did not apply to advances made by an American vessel within a foreign jurisdiction. On the other hand, Judge Ervin, sitting in the Southern District of Alabama, has recently held in Koskiner v. The Imberhorne (not yet reported) that the section applies to advances made in foreign ports (even by foreign vessels). It would serve no useful purpose to recapitulate the particular considerations urged in support of the opposing conclusions. The arguments in support of one construction of the statute are not susceptible of a conclusive answer by the advocate of an opposing construction; a final conclusion can be based only upon a preponderance of the considerations which serve to disclose the intent of Congress. I shall hold that the statutory provision in question applies to the situation presented here, and that the advances in issue, although made in a foreign port, having been made by vessels of the United States, were unlawful and may be recovered by the seamen.

Decree for libellants in each case, with costs, for the amount of the advance payments deducted. Under the circumstances the claim to the penalty specified in U. S. Rev. St., Sec. 4529, is denied.

VAN VECHTEN VEEDER, U. S. J.

58

Final Decree.

At a Stated Term of the United States District Court Held in and for the Eastern District of New York, at the Post Office Building, in the Borough of Brooklyn, City of New York, on the 3rd Day of September, 1917.

Present: Hon. Thomas I. Chatfield, District Judge.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," Her Tackle, Apparel, etc.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and due deliberation having been had and the Court having filed its opinion, it is now

Ordered, adjudged and decreed, by the Court, that the libellants recover against the Barkentine Windrush her tackle, apparel, etc., the sums set opposite their names, as follows:

John Hardy	\$25.00
Fred Nielsen	\$25.00
August Nielsen	\$25.00
Wilhelm Rohr	\$25.00
Paul Udsen	\$25.00
John Broather	\$20.00
F. Christensen	\$25.00
Johannes Heimo	\$25.00
Arthur Goldstein	\$40.00

59 together with costs and disbursements, taxed in the sum of \$74.90, making in all the sum of \$309.90, and that the said Barkentine Windrush be condemned to pay the same, and it is

Further ordered, that unless an appeal be taken from this decree within ten days, the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of the said Barkentine Windrush, do cause the engagements of their stipulators to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulation.

Enter,

THOMAS I. CHATFIELD, D. J.

60

Notice of Appeal.

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," Her Tackle, Apparel, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant.

SIRS: Please take notice that the claimant herein hereby appeals to the United States Circuit Court of Appeals, Second Circuit, from the final decree in the above action, entered in the office of the Clerk of the United States District Court for the Eastern District of New York on the 19th day of June, 1917, and from each and every part of said decree.

Dated, New York, September 20, 1917.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Claimant.

27 William Street, Borough of Manhattan, City of New York, N.Y.

To: Silas B. Axtell, Esq., Proctor for Libellant, 1 Broadway, New York City; Percy G. B. Gilkes, Esq., Clerk, U. S. District Court, Eastern District of New York, Brooklyn, N. Y.

61

Assignment of Error.

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER Co.,
Claimant.

The claimant, Shepard & Morse Lumber Company, hereby assigns error in the final decision and decree of the District Court.

1. In that the Court held that section 10 (a) of the Act of March 4, 1915, prohibited the payment of advance wages to the seamen within the territorial jurisdiction of the Argentine Republic.

2. In that the Court held that the wages paid in advance at Buenos Aires were unlawfully paid and could be recovered by the libellants.

3. In that the Court did not hold that the libellants had been paid their full wages and were entitled to no recovery in this suit.

4. In that the Court made a decree in favor of the libellants.

5. In that the Court did not dismiss the libel.

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Claimant.

Stipulation as to Record.

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER Co.,
Claimant.

It is stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled suit, as agreed on by the parties.

Dated, New York, October —, 1917.

SILAS B. AXTELL,

Proctor for Libellants.

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Claimant.

Clerk's Certificate.

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER Co.,
Claimant.

I, Percy G. B. Gilkes, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the record of the District Court in the above entitled suit as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be affixed at the City of New York this — day of October, in the year of our Lord, One thousand nine hundred and seventeen and the Independence of the United States the One hundred and forty-second.

PERCY G. B. GILKES, Clerk.

64 United States Circuit Court of Appeals for the Second Circuit,
October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District
Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE "WINDRUSH," Her Tackle, etc., SHEPARD & MORSE
LUMBER COMPANY, Claimant-Appellant.

PAUL NEILSON et al., Libellants-Appellees,

v.

SAILING SHIP "RHINE," Her Engines, etc., RHINE SHIPPING COM-
PANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern
District of New York.

Appeals in Admiralty from Decrees Entered in District Court for the
Eastern District of New York.

Both the craft named are vessels of the United States, within the
meaning of that phrase as used in the statutes affecting ships
65 and seamen. In 1906 both were at Buenos Ayres, the Wind-
rush in May and the Rhine in October; both wanted crews,
and neither could get one (as is stipulated in writing) "except by
agreeing to pay one month's wages in advance." This means, as is
fairly shown by evidence, that the keepers of sailors' boarding houses,
commonly known as "crimps" have in that port such control of sea-
men, that no master can get a crew except by applying to them.

Both vessels got crews through a crimp; of the men shipped some
had actually stayed with the boarding master, or obtained supplies
from him or both; others had merely gone to him as a means of finding
employment; all however were treated alike, viz: taken before the
United States Consul, and signed on the articles, each man giving to
the boarding master an advance note for one month's wage, the payment
of which was duly noted. All the men so shipped knew what they
were doing, and apparently regarded it as the custom of the
port and a common incident of their trade; so undoubtedly did the
master; nor is there any evidence that the captain or owner profited
directly or indirectly by the transaction. They or their agents paid
the advance notes before the ship left Buenos Ayres.

On arrival at New York, the libellants refused to recognize the charges or deductions, and brought suit for a month's pay apiece, as for so much wages wrongfully withheld. The court below awarded the amount claimed, and claimants took these appeals,—which were argued together, the questions raised being identical.

Roscoe H. Hupper, for Appellants.
Silas B. Axtell, for Appellees.

Hough, C. J.:

The facts of these cases are in all material aspects those recited in
The State of Maine, 22 F. R., 734. Judge Addison Brown
66 there gave judgment as to whether the then Seaman's statute,
commonly known as the Dingley Act (June 26, 1884; 23
Stat., 55) entitled libellants such as these to a recovery; the present
question is whether (assuming the correctness of the decision cited)
more recent legislation, commonly known as the La Follette Act
(March 4, 1915; 38 Stat., 1168) requires a different ruling.

The material words of the statutes may be put in parallel thus
(some immaterial phrases being omitted or shortened):

1884.

1915.

It is hereby made unlawful to pay any seaman wages before leaving the port at which he may be engaged, in advance of the time when he has actually earned the same, or to pay such advance to any other person, or to pay any remuneration, (to one not authorized by Act of Congress) for shipment of seamen.

Any person paying advance wages, or such remuneration shall be deemed guilty of a misdemeanor, and punished by fine and (at option of the court) imprisonment.

The payment of such advance wages, or remuneration, shall in no case absolve the vessel from full payment of wages after they shall have been earned, and be no defence to a libel for recovery of wages.

87

This section shall apply as well to foreign vessels as to vessels of

It is hereby made unlawful to pay any seaman wages in advance of the time when he has actually earned the same, or to make any order or note therefor to any other person or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.

Any person violating the foregoing shall be deemed guilty of a misdemeanor and punished by fine, and (at option of the court) imprisonment.

The payment of such advance wages on allotment shall in no case absolve the vessel from full payment of wages after they shall have been earned and shall be no defence to a libel for recovery of wages.

If any person shall receive from any seaman any remuner-

the United States, and any foreign vessel violating the same shall be refused a clearance.

ation for providing him with employment, such person shall be deemed guilty of a misdemeanor and punished with fine or imprisonment.

This section shall apply as well to foreign vessels, while in waters of the United States, as to vessels of the United States, and any foreign vessel violating the same shall be refused a clearance.

The master, &c., of any vessel (domestic or foreign) seeking clearance from a port of the United States shall present his shipping articles at the office of clearance,—and none shall be granted unless the provisions of this article have been complied with.

The case of the State of Maine held that this portion of the statute of 1884 had no application to the employment of seamen by American vessels in foreign ports. That it was well decided we have no doubt, agreeing as we do with the reasons assigned, and considering the intellectual authority of a decision by that Judge of the highest.

The State Department, which through the Consuls, is charged with oversight of shipment of seamen abroad, accepted the ruling, and embodied it (with due reference to the decision) in the Consular Regulations, Sec. 237,—nor did the passage of the Act of 1915 produce any change in departmental instructions; what governed the action of the Consul at Buenos Ayres, when these libellants were shipped, was the rule of The State of Maine.

68 The only other interpretation of the Dingley Act thought instructive here is The Eudora, 190 U. S., 169, holding the statute applicable to foreign vessels in American ports, mainly on reasoning more elaborately set forth in Wildenhus' case, 120 U. S., 1, i. e. that any vessel and those on board her are subject to the civil and criminal law of the country into whose ports they come,—such subjection is one of the implied conditions of entry, which is a favor and not a right.

Unless there has been a change in the legal content of the statute, its interpretation must remain unchanged. So far as the language above given is concerned, there is but one change that can be relied on, i. e. that the application of the act to foreign vessels is expressly limited to waters of the United States, from which it is argued that the application to domestic vessels must be universal.

Of this it may be said, that by the same train of reasoning, some significance must be given to the section regarding clearances, in respect of which for domestic ships, the Act of 1884 said nothing, must it then follow that prior to 1915 vessels of the United States

violating the statute were necessarily entitled to clearance? Such a contention could not be made.

Indeed the argument for libellants proceeds mainly and frankly on the ground that the Act of 1915 is in its entirety so obviously remedial, that by it the status of seamen has been so radically changed, and the rigidity of their engagements so greatly relaxed, that it must have been intended to make the statute extraterritorially operative, and uplift sailors by putting on their employers the cost of a rascally way of doing business, over which this country has no direct jurisdiction.

Undoubtedly the methods of shipment exhibited in this record are vile, and it may be admitted as within legislative power to improve the social customs of a contract breaker, by encouraging the act of breach; but we are bound by what Congress did as expressed in the words employed, having recourse for that purpose to "the whole context of the statute" (Johnson vs. Southern Pacific Co., 69 U. S., 1), and this is true even when the law is both remedial and penal, but with the "design to give relief more dominant than to inflict punishment."

We find no words in the entire act rendering the particular kind of relief here sought, certainly within the legislative intent or meaning. We have not before us any reports of congressional committees, which however may be consulted only to ascertain motive (McLean vs. United States, 226 U. S., 374).

There are however some rules of law which the legislature must have intended by the words of this act to overset, if the libellants are entitled to a decree.

This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction (United States vs. Trans-Missouri Ass'n, 58 F. R., at 67). In every doubtful case, contemporaneous (Houghton vs. Payne, 194 U. S., 88) and departmental (United States vs. Cerecido &c. Co., 209 U. S., 337) construction is entitled to weight, when the words of a statute get before a court. That the present act is remedial is admitted, so was that of 1884, but both are also plainly penal. That remedies of the kind here demanded by libellants are more in favor now than in 1884, is true enough; but words have not necessarily changed their ordinary meaning, and the rules of statutory construction remain unaltered. The remedial and penal portions of the part of the statute under consideration cannot be separated, if what these ship masters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (Rex vs. Sawyer, 1 C. & K., 101) every and the strongest presumption is against such construction (American, &c. Co. vs. United Fruit Co., 213 U. S., 347).

The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this, that this executed contract must be set aside, because the statute in effect declares it repugnant to the "policy and morality" of the people of the United States.

70 We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to, ordinarily affects only executory contracts. The situation here is this, libellants demand a part of their wages in accordance with the law of the United States; respondents answer,—we paid you that part in Argentine in accordance with the law of that country; libellants reply the law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain unquestioned legislative order, and such order cannot be discovered in this statute.

In *The Eudora* and *State of Maine* (*supra*) a subsidiary reason for the harmonious construction there given to the Act of 1884, was that the announced rulings put foreign and domestic vessels on the same footing. That doctrine also was presumptively before Congress in passing the later statute. The ruling made below gives foreign vessels an advantage, certainly if (e. g.) the voyage is from one foreign port to another. No intent to do this is perceivable in the Act.

We have not overlooked *The Imberhorne*, 240 F. R., 830, and *The Talus*, 242 F. R., 954. In so far as they do not harmonize with the foregoing, we differ.

Decree reversed, and causes remanded with directions to dismiss the libels.

71 United States Circuit Court of Appeals for the Second Circuit,
October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District Judge.

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PAUL NEILSON et al., Libellants-Appellees,

v.

Sailing Ship "RHINE," Her Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern District of New York.

LEARNED HAND, D. J. (dissenting):

If Section 10 (a) had not been amended in the clause here in question, I should have felt bound by the construction which Judge

Brown had put upon it in *The State of Maine*, 22 Fed. R. 72, 903, under the well-settled rule that a prior accepted interpretation of the statute is incorporated into its reenactment. Moreover, I think that Judge Brown's decision was certainly right at the time he made it. His fourth reason for excluding American ships from the operation of the statute while in foreign ports seems to me to be unanswerable. The statute did not discriminate, as he says, between foreign vessels and those of the United States and it was necessary to give the general language of the statute the same application to one class as to the other.

Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in *Patterson v. Bark Eudora*, 190 U. S., 169, held that foreign vessels were bound, and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause, "while in waters of the United States," in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase, "foreign vessels." If the statute had read "as well to foreign vessels as to vessels of the United States, while in the waters of the United States," there could have been no doubt, but the limitation by its position directly affecting one class seems to me to give the other its general meaning, unless there was good contrary reason in the context.

I can see no reason in the context for such a limitation. Of course it results in some extra-territorial operation of the statutes, but only as regards vessels of the United States and we are used enough to statutes which assume to do that. It would not strain the interpretation of a statute to make it apply to any act done on board ship. It is true, these acts were done ashore, but they were to engage crews who should perform all their services in a United States ship; they were a condition upon those services and touched them as closely as possible. When performed by an American master, at least, not to consider an owner, no valid distinction in the purpose of the statute seems to me to be found in the locus of the act. The penalties against "crimps" in foreign countries stand upon a different footing; they are not associated with United States vessels and subject normally to the laws of the United States.

Again it is said that the provision making compliance with the statute a condition on clearances shows an intention to limit the application of the statute. Yet this touches only the remedy, and it would be a hard rule which limited the substance, because the remedy could not in the nature of things be coextensive with its general application. No inference seems to me justified from such a consideration.

Finally, the claimant insists that it puts United States vessels at a disadvantage in foreign ports. In such countries as do not protect their seamen against this form of exploitation, this is doubtless true, but the provision itself presupposes that the seamen are at an economic disadvantage. The initiative in all such efforts to impose a standard of wages bears at first against local industry. If it is not undertaken, all remedies must wait till other nations join. Granted

the supposed injustice of the practice, the ships or the men must therefore suffer till the evils of the practise get general recognition. The incidental burden on trade may conceivably not have been thought of equal moment with the putative welfare of the crews. In any case it seems to me that such considerations are beyond the proper cognizance of courts of law. Surely we have no right to assume that the interest of the state depends more upon the welfare of one of these conflicting economic classes than the other.

I dissent.

74 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 25th day of February, one thousand nine hundred and eighteen.

Present:

Hon. Henry G. Ward,
Hon. Charles M. Hough,
Circuit Judges.
Hon. Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE WINDRUSH, Her Tackle, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is reversed with costs and cause remanded with instructions to dismiss the libel.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.

C. M. H.

75 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. John Hardy et al., v. Barkentine "Windrush." Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 25, 1918. William Parkin, Clerk.

76 UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing

pages, numbered from 1 to 75 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of John Hardy et al., against Barkentine "Windrush" as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of March in the year of our Lord One Thousand Nine Hundred and Eighteen and of the Independence of the said United States the One Hundred and Forty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, Clerk.

77 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Barkentine "Windrush," Shepard & Morse Lumber Company, Claimant, is appellant, and John Hardy et al. are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you
78 that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 26404. Supreme Court of the United States, No. 937, October Term, 1917. John Hardy et al. vs. Shepard & Morse Lumber Company, Claimant of the Barkentine "Windrush." Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 8, 1918. William Parkin, Clerk.

79 United States Circuit Court of Appeals for the Second Circuit.

JOHN HARDY et al., Libelants-Appellees,
against

BARKENTINE "WINDRUSH," SHEPARD AND MORSE LUMBER COMPANY,
Claimant'-Appellants.

It is hereby stipulated, by and between the proctors for the respective parties hereto, that the transcript of record on file in the office of the clerk of the United States Supreme Court, may be taken as a return to the writ of certiorari in the above entitled action.

Dated, New York, April 8th, 1918.

SILAS B. AXTELL,

Proctor for Libelants-Appellees,
BURLINGHAM, VEEDER, MASTER &
FEARY,

Proctors for Claimant'-Appellants.

80 To the Honorable the Supreme Court of the United States,
Greeting:

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

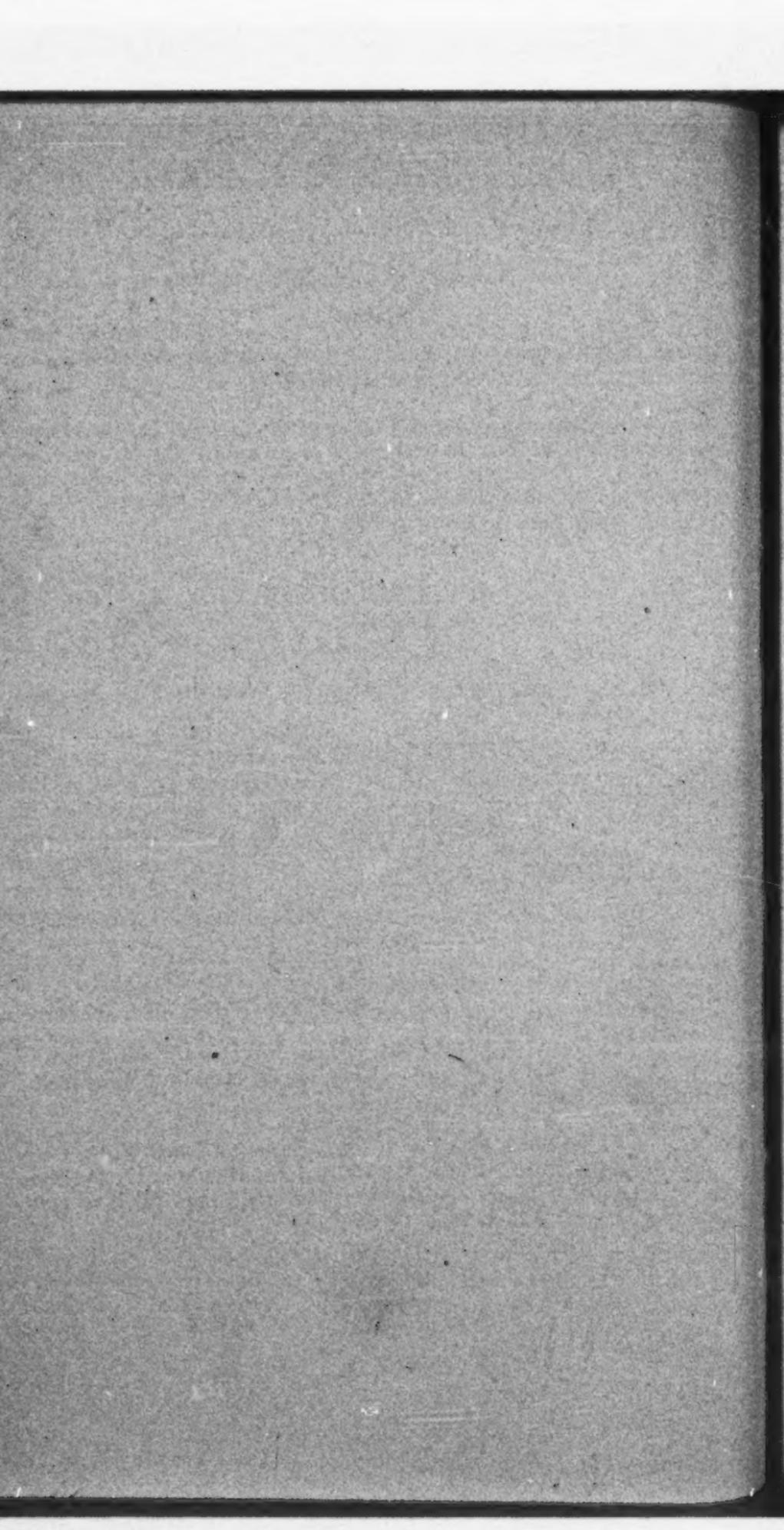
Dated, New York, April 9th, 1918.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
*Clerk of the United States Circuit Court
of Appeals for the Second Circuit.*

81 [Endorsed:] 937/26404. United States Circuit Court of Appeals, Second Circuit. John Hardy et al. v. "Windrush." Return to Certiorari. 1.70.

82 [Endorsed:] File No. 26404. Supreme Court U. S., October term, 1917. Term No. 937. John Hardy et al., Petitioners, vs. Shepard & Morse Lumber Co., Claimant, etc. Writ of certiorari and return. Filed April 15, 1918.



15
APR 15 1918

JAMES D. MAHER,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1917.

PAUL NIELSON *et al.*,
Libelants-Appellees,
against

Sailing Ship *Rhine*, RHINE SHIP-
PING COMPANY,
Claimant-Appellant.

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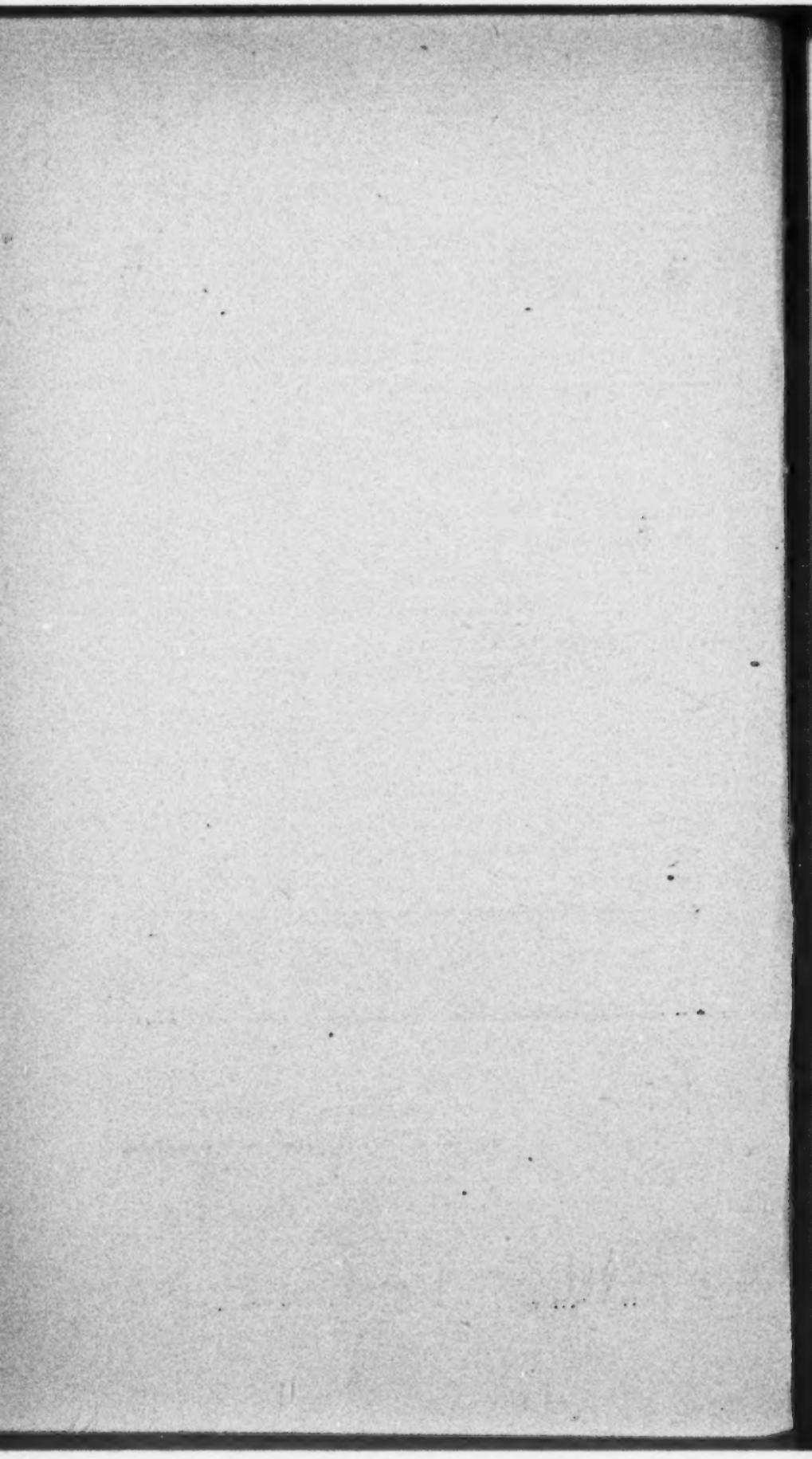
JOHN HARDY *et al.*,
Libelants-Appellees,
against

Barkentine *Windrush*, SHEPARD
& MORSE LUMBER COMPANY,
Claimant-Appellant.

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MOTION FOR ADVANCEMENT.

SILAS B. AXTELL,
Counsel for Libelants-Appellees.



Supreme Court of the United States

OCTOBER TERM, 1917.

PAUL NIELSON <i>et al.</i> , Libelants-Appellees, against Sailing Ship <i>Rhine</i> , RHINE SHIP- PING COMPANY, Claimant-Appellant.	#936.
JOHN HARDY <i>et al.</i> , Libelants-Appellees, against Barkentine <i>Windrush</i> , SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.	#937.

MOTION FOR ADVANCEMENT.

Now comes Paul Nielson *et al.*, libelants-appellees, and John Hardy *et al.*, libelants-appellees, in the above-entitled actions, by their counsel, Silas B. Axtell, and moves that these causes be advanced upon the docket of this court and set down for hearing at an early date to be fixed by this court upon the following reasons:

1. That these are actions brought by the respective libelants for wages against the respective American vessels. That said wages are alleged to

be due for voyages during the seasons of 1916-1917, aggregating approximately \$700, in both cases. That there are some nineteen libelants in said actions, all being wage earners and American seamen.

2. That there is involved in these cases an interpretation of Section 10-A of the Seamen's Act, same being part of the Act of Congress of March 4th, 1915, Chapter 153, Section 11, 38 Stat. L., 1168-1169.

3. For the reason that a writ of certiorari has been granted herein by this court after due consideration on April 2nd, 1918.

4. For the further reason that this court has seen fit to advance for argument the case of *Dillon v. Strathearn Steamship Company, Ltd.*, claimant of the steamship *Strathearn*, #868, October Term, 1917, of this court, to the Summary Calendar, and has set same down for argument for October 14th, 1918.

5. For the reason that this court has seen fit to grant a writ of certiorari in the case of *Erik Sandberg et al. v. John McDonald*, claimant of the steamship *Talus*, #935, which involves this same statute of the United States herein to be interpreted, in its application to foreign vessels.

6. For the further reason that the questions to be determined by this court in the case of *Dillon v. Strathearn* are part of the same enactment of Congress, to wit: Seamen's Act of March 4th, 1915, which is an enactment having to do with the general law, usages and methods pertaining to the engagement and regulation of crews on domestic and foreign vessels engaged in commerce in the United States.

7. For the further reason that an application is now, as petitioner is informed and believes, made or about to be made for advancement in the case of *Erik Sandberg v. The Steamship Talus*.

8. For the further reason that the legal questions involved in these cases have a direct bearing upon the shipping of the United States, upon the regulation of contracts of employment made or to be made upon foreign and domestic vessels which are engaged in commerce with the United States.

9. For the further reason that the questions involved here are of international importance and are of a special concern to the people of the United States, as it affects the ability of American shipowners to compete on an equal wage basis with foreign shipowners.

10. For the further reason that the rights of thousands of wage earners are involved.

WHEREFORE, on account of all the foregoing reasons, and especially because enforcement of the Seamen's Act, which will be fully determined and considered in these several cases, is a novel piece of legislation, radical in its reforms and intended to give freedom to a down-trodden and enslaved class of society, your petitioners move that these causes be advanced to be heard, if possible, on October 14th, 1918, the date already set for the argument of the case of *Dillon v. Strathearn Steamship Company, Ltd.*, claimant of the steamship *Strathearn*, #868.

Dated, New York, April 2nd, 1918.

SILAS B. AXTELL,
Counsel for Libelants-Appellees.

Notice is hereby given that the foregoing motion will be presented to the Supreme Court of the United States on Monday, the 15th day of April, 1918, at the opening of court on that day.

Dated, New York, April 2nd, 1918.

SILAS B. AXTELL,
Counsel for Libelants-Appellees.

Service of a copy of the foregoing motion and notice is hereby admitted.

Dated, New York, April 2nd, 1918.

Burlington, Peeler, Masters & Co.

Counsel for Appellant.⁵

No. 1

304 U.S. 10

Supreme Court of the United States

TERM, 1918.

No.

PAUL NEILSON *et al.*,

Plaintiffs-Appellees,

against

Sailing Ship *Rhine*,

RHINE SHIPPING COMPANY,

Claimant-Appellant.

JOHN HARDY *et al.*,

Plaintiffs-Appellees,

against

Barkentine *Windrush*,

SHEPARD & MOESE LUMBER COMPANY,

Claimant-Appellant.

PETITION FOR WRIT OF CERTIORARI IN ERROR TO THE CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

SILAS B. AXTELL,

Attorney for Petitioners.

**Notice of Presentation of Petition for
Writ of Certiorari.**

Supreme Court of the United States

PAUL NEILSON *et al.*,
Libelants-Appellees,
against

Sailing Ship *Rhine*,
RHINE SHIPPING COMPANY,
Claimant-Appellant.

JOHN HARDY *et al.*,
Libelants-Appellees,
against

Barkentine *Windrush*,
SHEPARD & MORSE LUMBER COM-
PANY,
Claimant-Appellant.

PLEASE TAKE NOTICE that the annexed petition
for a writ of certiorari to the United States Cir-
cuit Court of Appeals for the Second Circuit will
be submitted to the Supreme Court of the United

**States at the opening of court on March 25th, 1918,
or as soon thereafter as counsel can be heard.**

Dated, March 11th, 1918.

**SILAS B. AXTELL,
Counsel for Petitioners.**

**BURLINGHAM, VEEDER, MASTEN & FEARNEY, Esqs..
Counsel for Respondents.**

Petition for Writ of Certiorari.**SUPREME COURT OF THE UNITED STATES.**

JOHN HARDY *et al.*, PAUL NEILSEN *et al.*,
Libelants-Petitioners,
against
Barks *Windrush* and *Rhine*,
Claimant-Respondents.

Your petitioners John Hardy *et al.* and Paul Neilson *et al.* respectfully show to this Court as follows:

I. Your petitioners were at the time of the commencement of this suit residents of the City of New York, and all were American seamen within the meaning of the United States statutes.

II. That your petitioners are suing in these actions, brought *in rem*, in the United States District Court for the Eastern District of New York to recover wages earned on the American barks *Windrush* and *Rhine* respectively.

III. Petitioners respectfully show that in the action of *Hardy et al. v. Bark Windrush*, there are joined nine seamen, who seek to recover the sum of \$25 each, or one month's wages, alleged to have been wrongfully deducted from their account of wages by the master at the completion of the voyage at New York, July 13th, 1916, except that one of the petitioners, Johana Goldstein, makes claim

for the recovery of \$40, or one month's wages earned, as cook of the ship.

IV. Petitioners show that in the action of *Neilsen et al. v. Bark Rhine*, there are joined the claims of ten seamen, each of whom is seeing to recover wages in the sum of \$25 alleged to have been wrongfully deducted from their account of wages, at the end of the voyage, at New York, on December 28th, 1916 (see p. 3 of transcript of record).

V. Your petitioners respectfully show that the month's pay deducted from each of them as alleged (a) was wrongfully deducted; (b) that the payment was unlawful; (c) that the advance notes signed, as alleged, by the respondents, at Buenos Ayres, for wages in advance of the time earned, was no defense to these actions, by reason of Section 10a of the Seamen's Act of March 4th, 1915, and Section 4611, United States Revised Statutes.

VI. All of your petitioners respectfully show that they are entitled to recover waiting time in accordance with the provisions of Section 4529 of the United States Revised Statutes as amended.

VII. Your petitioners John Hardy *et al.* respectfully show that they signed articles on the American bark *Windrush*, at the Port of Buenos Ayres, on or about May 10th, 1916, for a voyage to New York, there to be discharged and paid off. That they signed the regular articles of agreement as required by the laws of the United States before the American Consul at Buenos Ayres on said date. That these were the same articles that were taken out at New York at the commencement of the voy-

age. They went aboard said vessel directly and proceeded from the Port of Buenos Ayres within two days thereafter, and before they had earned but a small portion of the one month's wages involved.

VIII. Your petitioners John Hardy *et al.* respectfully show that some of them were engaged or hired by the master or first officer of the American bark *Windrush* on board the ship at the Port of Buenos Ayres before they went to the boarding house of Tommy Moore; that they signed the same articles that were taken out at New York at the commencement of the voyage, as required by the laws of the United States. That in some cases they were instructed by the master or mate to go first to the boarding house of Tommy Moore, and have him send them on board the ship (see Testimony, p. 33, fol. 130; p. 51, fol. 201).

IX. Your petitioners Paul Neilsen *et al.* of the bark *Rhine* respectfully show that they signed articles on the American bark *Rhine*, before the American Consul, at Buenos Ayres, on October 7th, 1916, for a voyage to New York. That within two days after signing articles at the consul's office, they proceeded with said vessel from the Port of Buenos Ayres and arrived at the Port of New York on December 28th, 1916.

X. All of your petitioners, in both cases, respectfully show that they have received all of their wages earned except for the sum of one month's wages, which has been unlawfully deducted by the owners of the respective vessels in each case; that it is claimed by the respondents herein that the

said month's wages were *assigned* to one Tommy Moore, a boarding house keeper in Buenos Ayres, by each of your petitioners. That said *assignment* was in the form of an order upon the master to pay said money to said boarding house keeper. That said order or advance was noted on the articles of the ship and made in accordance with the regulations of the Department of Commerce, as based upon the rulings made by the Treasury Department of the United States and subsequently enforced by the Department of Commerce by virtue of a decision of Judge Addison Brown in the *Matter of State of Maine*, in 1884, reported 22 Fed., 734, for a period of two years (1884-1886).

XI. Petitioners respectfully show that action was commenced in both cases shortly after the termination of said voyages, for the recovery of said wages, together with waiting time, in accordance with Section 4529 of the United States Revised Statutes. That these cases came on for hearing in the United States District Court for the Eastern District of New York before Hon. Van Vechten Veeder, District Judge, and after due consideration a decision was rendered, sustaining the rights of the libelants as alleged in their respective libels, except that no waiting time was allowed under Section 4529. Further, the Trial Court held that advances to seamen in these cases, on American vessels, were unlawful, thereby taking direct issue with the decision of Judge Addison Brown in the *State of Maine (supra)*.

XII. All of your petitioners respectfully show that these cases were appealed by the claimants, and that they came on for argument in the United

States Circuit Court of Appeals before Judges Ward, Hough and Hand (Learned) on the 23rd day of January, 1918. That a decision was rendered on or about February 14, 1918, by divided Court, reversing the decision of the District Court, Learned Hand, *D. J.*, dissenting. The opinion of the Circuit Court of Appeals, in which Ward, *C. J.*, concurred, was written by Hough, *C. J.*

THE STATUTE.

Important differences in the Act of 1915 and Act of 1884 are indicated by *italics*.

ACT OF JUNE 26, 1884, c. ACT OF MARCH 4, 1915,
 121, SEC. 10, 23 Stat. C. 153, SEC. 11, 38 Stat.
 L. 55, 56. L. 1168-69.

"SEC. 11. That section twenty-four of the act entitled 'An act to amend the laws relating to American seaman, for the protection of such seaman, and to promote commerce', approved December twenty-first, eighteen hundred ninety-eight, be, and is hereby, amended to read as follows:

"SEC. 24. That section ten of chapter one hundred twenty-one of the laws of eighteen hundred eighty-four, as amended by section three of chapter four hundred twenty-one of the laws of eighteen hundred eighty-six, be, and is hereby, amended to read as follows:

"SEC. 10. That it shall
 be, and is hereby, made
 unlawful in any case to
 pay any seaman wages
before leaving the port
at which such seaman
may be engaged in ad-
vance of the time when
he has actually earned

"SEC. 10 (a). That it
 shall be, and is hereby,
 made unlawful in any
 case to pay any seaman
 wages

in advance of the time
 when he has actually
 earned the same, or to

the same, or to pay such advance

wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.

Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than

four times the amount of the wages so advanced or remuneration so paid
and may be also imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action

pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.

Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than

\$25 nor more than \$100

and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit

for the recovery of such wages: Provided, That this section shall not apply to whaling vessels: And provided further,

or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation.

(b) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister or children.

(c) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to

examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

(d) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine of not exceeding \$500 or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels as to vessels of the United States;

(e) *This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any mas-*

ter, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

and any foreign vessel the master, owner, consignee or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) Under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

XIII. Your petitioners respectfully show that the questions of law involved herein, are the following:

1. Did the Circuit Court of Appeals err as a matter of law in concluding on the facts that it was impossible for the master of the barks *Windrush* and *Rhine*, to obtain crews without paying a month's wages in advance, to the crimp?
2. Did Congress intend that Section 10a of the Seamen's Act, should control and regulate the shipment of crews on American vessels while in foreign ports?
3. Shall the courts of the United States give force and effect to a contract or agreement made in a foreign jurisdiction which is contrary to the public policy of the United States?
4. Did Congress intend Section 10 of the Seamen's Act to apply to advances made on American vessels in foreign ports when action was brought by the seaman to recover the wages?
5. What significance, if any, do these words in Section 10 have:

"The payment of such advance wages or allotment, shall *in no case*, except as herein provided, absolve the vessel or master or the owner thereof from the full payment of wages, after the same shall have been actually earned and shall be no defense to a libel, suit or action for the recovery of such wages."
6. Can the order made by the seaman upon the master to pay a portion of his wages to a person in Buenos Ayres be considered as an *executed* contract as generally understood, in view of the fact that the seaman at the same time signed an agree-

ment with the master of the ship to earn the very wages *then assigned?*

7. Does the rule applicable to *executed contracts made in foreign jurisdiction*, apply to an assignment of wages by a seaman?

8. Can a seaman make a valid assignment of wages in advance of the time earned, which are *to be earned on an American vessel?*

9. If it be decided that the assignment by the seaman of wages in advance of the time earned, be considered an *executed contract*, will such payment be recognized in the United States, in view of the declared public policy of this country as indicated by the Seamen's Act?

10. The seaman having earned his wages on an American vessel and not having released the ship for his wages, and there having been no consideration for the advance note signed by the seaman, has Section 12 of the Act of March 4th, 1915, which reads as follows, any bearing on the case:

"No wages due or accrued to any seaman or apprentice shall be subject to attachment or arrestment from any court, and that payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or any attachment, encroachment or arrestment thereon; AND NO ASSIGNMENT OR SALE OF WAGES OR OF SALVAGE ACCRUING THEREON, SHALL BIND THE PARTY MAKING THE SAME, EXCEPT SUCH ALLOTMENTS AS ARE AUTHORIZED BY THIS TITLE. THIS SECTION SHALL APPLY TO FISHERMEN EMPLOYED ON FISHING VESSELS AS WELL AS TO SEAMEN, ETC."

(This point was not mentioned in the opinion of the Court below.)

11. What control of protection can Congress of the United States exercise over vessels, officers and crews of the United States in absence of conflict with local mandatory law?

12. Is the public policy of the United States as to advance wages to seamen, expressed in Section 10 of the Seamen's Act?

13. To what extent, if any, can the laws of the United States protect American seamen from wrongful acts on the part of the master of a ship, while the vessel is lying in the navigable waters of a foreign nation?

XIV. And your petitioners further aver that the present cases are ones in which it is proper for the Court to issue a writ of certiorari, for the following reasons:

1. Because the decisions appealed from involve the interpretation of a statute of the United States.

2. Because the statute of the United States involved, is part of a highly remedial act, intended to benefit one particular class of individuals.

3. Because the petitioners here are American seamen and the highest degree of care is exercised by Courts of the United States in protecting their rights.

4. Because the petitioners, some twenty in number, have been compelled to work on American vessels for one month, for which they have received no actual payment.

5. Because there has been a manifest wrong done to the petitioners and no remedy has been found.

6. Because it is to the best interest of the petitioners and the people of the United States that this

statute, evidently intended to benefit a certain class of society, should be interpreted by the Court of last resort.

7. An interpretation by the Supreme Court, of this admittedly ambiguous statute, should be made, because there is a serious doubt as to its exact meaning. (See opinion of Learned Hand, in the Circuit Court; Judge Veeder, in the District Court, 244 Fed., 833; decision of Judge Erwin, 242 Fed., 956, and Judge Chatfield, *Delogoa, supra*, holding to view favorable to libelants and the decision of Hough, *C. J., contra.*)

8. For the further reason that it is desirable that the exact intention of Congress in framing this statute, be determined.

9. For the further reason that it is desirable to determine to what extent Congress of the United States can control the conduct of masters and crews of American vessels, while in foreign ports.

10. Because it is desirable to determine whether the relief demanded by the petitioners can be denied by a court of the United States, without giving force and effect to an executory contract or agreement which is contrary to the declared public policy of the United States?

11. Because if the contention of the petitioners are upheld an admitted evil will be remedied (see prevailing opinion, Hough, *C. J.*):

"Undoubtedly the methods of shipment exhibited in this record are vile, and it may be admitted as within the legislative power to improve the social customs of a contract breaker."

POINT I.

Irrespective of whether or not Congress intended particularly to effect advances of wages, paid on foreign or domestic vessels in foreign ports, a contract or advance payment cannot be given legal effect in a court of the United States because to do so is contrary to the declared public policy of the United States.

As was urged in the Court below, contracts made in foreign jurisdiction which are contrary to the public policy of the forum cannot be enforced or recognized.

Wharton on Conflict of Laws, Vol. 2, 3d Ed., page 94: "A local law may prevent the enforcement of a contract within the jurisdiction and necessarily has that effect if it expressly applies to such contracts." (See *Lemonious v. Mayer*, 71 Misc., 522; *Williamson v. Majors*, 169 F., 764.) These cases deal with the statutes of Mississippi relating to gambling—or dealing in futures.

In 1912, the Supreme Court of Mississippi, in the case of *Ascher & Baxter v. Moyse*, affirmed the principle laid down in the case of *Lemonious v. Mayer* (see 57 So. West, 303). On page 304 it is said:

"It is true that an act of the legislature can have no EXTRA-TERRITORIAL FORCE, and therefore can neither make unlawful a contract entered into upon the soil of another state, nor subject a party thereto to punishment, YET AT THE SAME TIME, in view of the well settled policy of this state, IN CONTEMPLATION OF THE GROWING AND INCREASING

EVILS OF TRAFFIC, BOTH FINANCIAL AND MORAL, IT IS UNTHINKABLE TO BELIEVE THAT THE LEGISLATION INTENDED THAT THE COURTS OF THIS STATE should be thrown wide open, wherein the CONTRACTING PARTIES should be given redress for the enforcement of such contracts when made OUTSIDE THE STATE."

These laws provided that it should be unlawful to make such contracts in the State of Mississippi. Second, that any person making such contract should be guilty of a misdemeanor. Third, that in any event a contract for foreclosure and sale of a commodity "shall not be enforced by the Court; nor shall any contract of the kind commonly called 'futures,' be enforced, etc."

It was and still is urged that this statute and the decision above referred to of the Supreme Court of the State of Mississippi, and the U. S. Circuit Court of Appeals for the Fifth Circuit, bear a clear analogy to the statute and facts in the case at bar.

The Circuit Court of Appeals for the Second Circuit, speaking by the learned Judge Hough, has this only to say on the point (p. 7 of the Opinion):

"We discover no consensus on this point of morals in the written law, there is no evidence on the subject and the rule appealed to ordinarily affects only *executory* contracts; the situation here is this: libelants demanded a part of their wages in accordance with the laws of the United States; respondent's answer: we paid you that part in Argentine in accordance with the law of that country; libelants reply: the law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain unquestioned legislative order, and such order can not be discovered in the Statute."

Here the Court meets the issue raised and decides it on the ground that the contract was *an executed one*, and the statute is not *plain*.

How can it be said that the contract *was wholly executed* when at the time it was made at Buenos Ayres, Argentina, it was necessary still for the seamen to go aboard the vessel and work for one month navigating the ship on the high seas? The contract the Court refers to we presume is the advance note itself: this is simply an order on the master signed by the seaman requesting the master to pay a sum of money to the crimp for value received, at the same time the seaman promised to go on the vessel and work for one month to pay for that note and his employment; wasn't the agreement of the seaman to work on the ship and earn the money paid to the boarding master at his order, a part of the contract? If so the contract was *executory*. Consideration for the note was one month's labor, to be performed on an American vessel.

Cyc. says: "An executed contract is one all of whose provisions have been *fully executed* and performed."

But even if the contract were executed—it is difficult to see how Congress could more clearly order the Courts to disregard such payments, the words "*in no case shall such payments be a defense*"—these words are all inclusive, plain, direct and simple, and yet the learned Court says there is no "Plain, unquestioned order."

Statutes of a foreign state which are contrary to the policy of the forum will not be enforced—even though no question of morals is involved. The Court of Appeals of the State of New York held that a statute of Kansas by right of comity amongst states cannot be enforced in the State of New York

against a stockholder to satisfy debts of a corporation, when the statutes of this State contain no such provision. *Marshall v. Sherman*, 148 N. Y., 14.

In *Smith v. The Union Bank*, 5 Pet., 523 (9 U. S., 452), the Supreme Court held that in the administration of an estate the law of the place of the administrator shall determine the priorities, not the laws of the State where the contract was made. By the laws of Virginia, a land debt had a priority. Under the laws of Maryland, where the estate was being administered, no such priority existed—held that the laws of Maryland controlled. Clearly in this case the contract was executed and not executory. The bond debt was executed, but lender not satisfied. Here, the advance note was executed, but the wages not paid.

In fact, it must be concluded that if a contract were made in a foreign land, even by the mandate of foreign government, still being contrary to the declared public policy of the United States, it could not be enforced or recognized by the Courts of the United States.

The law of England and America on the subject has been settled since 1789.

Biggs v. Lawrence, 178 Fed., 3 T. R., 454.
Clogos v. Pebaleria, 4 T. R., 466.

As to smuggling contracts:

Lightfoot v. Tenant, 1796, 1 B. E. P., 522.

Contract valid in France, invalid in England.

As to contract for shipment of goods contrary to laws of England. Contract made in France, where lawful, is invalid in England.

Grell v. Leng, 1864, 16 C. B. (N. S.), 73.

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It follows, of course, that if this principle of law is followed in the case at bar, the advances made by foreign owners in foreign ports will likewise be paid at the risk of paying them again in case their seamen happen to get them into a court of the United States—as held by Judge Ervin in *The Talus*, 242 F., 954, and Judge Chatfield in *Delogoa*, 244 F., 835, 2 *Imberhorne*, 240 F., 830.

If the contracts relating to the seamen were in any sense performed or finished at Buenos Ayres, there might be a different question raised here, *but a seaman is not paid his wages until he is discharged from the ship and his account settled. None of the libelants received their money or signed off from the ship's articles until they reached a port of the United States, as was contemplated by the contract of employment and statutes of the United States controlling.*

When a foreign vessel comes before a court of the United States, the situation may be the same.

Story on Conflict of Laws, Art. 244, page 281:

"But there is an exception to the rule as to the universal validity of contracts, which is, that no nation is bound to recognize or enforce any contracts which are injurious to its own interests or to those of its own subjects.

Greenwood v. Curtis, 6 Mass., 376.

Blanchard v. Russell, 13 Mass., 1.

Whister v. Stodder, 8 Martin, 95.

Huberus has expressed it in the following terms, *Quaetemus nihil potestati aut fori alterius imperantis ejusque civium praejudicatur*, and Mr. Justice Martin still more

clearly expresses it, in saying that the execution applies to cases in which the contract is immoral or unjust, or in which the enforcing it in a state, would be injurious to the rights, the interest, or the convenience of such state or its citizens."

Again, on page 324 this learned writer says:

"When a contract is made in a country between a citizen and a foreigner, it seems admitted that the law of the place where the contract is made ought to prevail, unless the contract is to be performed elsewhere. In the common law of England and America all these niceties are discarded, every contract, whether made between foreigners or between foreigners and citizens, is deemed to be governed by the laws of the place where it is made and is to be executed.

Smith v. Meade, 3 Conn., 253.

De Dobre v. DeLantre, 2 Harr. & Johns., 193.

Peck v. Hibbard, 26 Vt., 703.

Tasks v. Nicholls, 5 Barb., 38.

The rule was fully recognized by the Supreme Court of the United States. Contracts made in one place to be executed in another are to be governed by the laws of the place of performance. Andrews v. Pond, 13 Peters, 65." (Italics mine.)

And on page 326 of *Conflict of Laws*:

"In one of the earliest cases Lord Mansfield states the doctrine with his usual clearness: '*The law of the place can never be the rule where the transaction is entered into with an express view to the law of another country, as the rule by which it is to be governed*,' and this has uniformly been recognized as the correct exposition of the common law."

Story, Art. 23, page 21, *Conflict of Laws*.

On the contrary, every nation has an exclusive right to regulate persons and things within its own territory according to its own sovereign will and public policy.

Article 23:

"A state may prohibit the operation of all foreign laws, and the rights growing out of them, within its own territories. It may prohibit some foreign laws, and it may admit the operation of others. It may recognize and modify and qualify some foreign laws; it may enlarge or give universal effect to others. It may interdict the administration of some foreign laws, it may favor the introduction of others; when its own code speaks positively on the subject it must be obeyed by all persons who are within the reach of its sovereignty—when its customary, unwritten, or common law speaks directly on the subject it is equally to be obeyed, for it has an equal obligation with its positive code. When both are silent, then, and then only, can the question properly arise, what law is to govern in the absence of any clear declaration of the sovereign will."

We find the following in the *Cyclopedia of Law and Procedure*, Vol. 9, p. 41:

"If an agreement binds the parties or either of them, or if a consideration is to do something opposed to the public policy of the state or nation, it is illegal and absolutely void however solemnly made. If a court enforce such agreements it would employ its functions in doing what it had created to destroy."

Alabama:

State v. Metcalfe, 75 Ala., 42.

California:

Danielwitz v. Sheppard, 62 Cal., 339.

Dakota:

Peck v. Levinger, 6 Dak., 54, 50 N. W.,
481.

Georgia:

Mercier v. Mercier, 50 Ga., 546, 15 Am.
Rep., 594.

Illinois:

Cothran v. Ellis, 125 Ill., 496, 16 N. E.,
646.

Indiana:

Blont v. Proctor, 5 Blackf., 265.

Iowa:

Merill v. Packer, 80 Iowa, 542, 45 N. W.,
1076.

Louisiana:

Norton v. Dawson, 19 La. Ann., 464, 92
Am. Dec., 548.

Massachusetts:

Holcomb v. Weaver, 136 Mass., 265.

Michigan:

McNamara v. Gargett, 68 Mich., 454, 36
N. W., 218, 13 Am. St. Rep., 355.

Mississippi:

Adams v. Rowan, 8 Sm. & M., 624.

Nebraska:

Clarke v. Omaha etc. R. Co., 5 Nebr., 314.

New York:

Richardson v. Crandall, 48 N. Y., 348 (affirming 47 Barb., 335, which reversed 30 How. Pr., 134).

Ohio:

Cumpston v. Lambert, 18 Ohio, 81, 51 Am. Dec., 442.

Tennessee:

Bledsoe v. Jackson, 4 Sneed, 429.

Texas:

Specht v. Collins, 81 Tex., 213, 16 S. W., 934.

Vermont:

Spalding v. Preston, 21 Vt., 9, 50 Am. Dec., 68.

Wisconsin:

Pickett v. Wiotz School Dist. No. 1, 25 Wis., 551, 3 Am. Rep., 105.

United States:

Milne v. Huber, 3 McLean, 212, 17 Fed. Cas No. 9,617.

POINT II.

A contract sued upon which is based upon illegal consideration cannot be enforced.

Duldy v. Collier, 87 Ala., 431; 13 Am. St. Rep., 55.

It would seem that the consideration for the advances at Argentina were clearly unlawful and void under *Section 10 of the Seamen's Act*.

Alabama:

Duldy v. Collier, 87 Ala., 431; 6 So., 304; 13 Am. St. Rep., 55.

Arkansas:

Tucker v. West, 29 Ark., 386.

California:

Prost v. More, 40 Cal., 347.

Illinois:

Cincinnati Mut. Health Assn. Co. v. Rosenthal, 55 Ill., 85; 8 Am. Rep., 626.

Indiana:

Crowder v. Reed, 80 Ind., 1.

Iowa:

Dillon v. Allen, 46 Iowa, 299; 26 Am. Rep., 145.

Chambers v. Games, 2 Greene, 320.

Louisiana :

Harvey v. Fitzgerald, 6 Mart., 530.

Massachusetts :

Jones v. Smith, 3 Gray, 500.

Minnesota :

Solomon v. Dreschler, 4 Minn., 278.

Pennsylvania :

Thorne v. Travelers' Ins. Co., 80 Pa. St., 15; 21 Am. Rep., 89.

South Carolina :

McConnell v. Kitchens, 20 S. C., 430; 47 Am. Rep., 845.

Even executed contracts are not recognized when contrary to the public policy of the state.

In *Brook v. Brook*, 7 Jur. N. S., 422; 3 Sne. & Gif., 481, it was held that marriage between uncle and niece though effected outside of England, will not be recognized in England, as it is contrary to the morals of that country.

In *Hyde v. Hyde*, Law Rep., 1 P. & P. 130, it was held, that a marriage consummated under the laws of the State of Utah, where polygamy is permitted, will not be enforced in England, though both parties were single at the time they entered into the contract. In that case the wife sought to compel support of the husband. Relief denied.

POINT III.

Congress by enacting Section Ten of the Seamen's Act intended to protect American seamen on American vessels on the high seas and in foreign ports, during the term of this employment.

The Court below finds that Congress did not intend this act to apply to any advances made outside the territory of the United States, the reasoning is this: that the statute contains a number of provisions making it a misdemeanor to pay such advances—obviously the statute can have no extraterritorial effect in punishing the master for a misdemeanor, therefore this clause: "The payments of such advance allotment, etc.," could be intended to apply only to advances made in the United States.

While we naturally think that the views of the dissenting justice are the more sound, still there are other very vital reasons for believing Congress intended to protect American seamen while in foreign ports; we find that we have laws for the regulation and control of masters and seamen in foreign ports and on the high seas, as to most every conceivable situation, such has always been the maritime policy of England and the United States. For instance:

By Section 4580 U. S. R. St.: If a seaman is discharged abroad it shall be done before the Consul, who shall see that the seaman gets his wages and that his rights are protected.

Section 4581 U. S. R. St.: Provides a penalty against the Consul for failure to perform his duty.

Section 4582 U. S. R. St.: Renders owners liable to penalty for a neglect of master to perform cer-

tain duties, where an American vessel is sold abroad.

Section 4511: Provides manner in which seamen shall be engaged in domestic ports on American vessels.

Section 4517 U. S. R. St.: Provides, that seamen shipped abroad before Consul or agent on American vessels shall be engaged in the same manner as prescribed by Section 4511 for shipment of seamen in American ports before U. S. Shipping Commissioner.

Surely, this is a clear indication of the intention of Congress to care for, guide, control and protect to the utmost American seamen in foreign ports.

The point is submitted, that where the interpretation of an act may be made in such a way as to protect American seamen that interpretation should be taken by the Court, especially as seamen have always been regarded as wards of the courts.

Reed v. Canfield, Vol. 20, Fed. Cas., 11641.
Harden v. Gordon, Fed. Cas., 6047.

That this has been the policy of England goes without saying. A mere glance at the Merchants Shipping Act with its many provisions as to conduct of seamen on board; on the high seas; in foreign ports; the duties of Consuls; the care of disabled and ill seamen and methods of returning such seamen to home ports; the manner in which they are to be discharged and paid off, etc., etc., is sufficient evidence of this fact.

Congress of the United States has followed in a measure the provisions made by the British Government for the protection of seamen, etc., and so we find:

The Supreme Court has held in the case of *The Belgenland*, 114 U. S., 325, that in all matters that affect parties on board a ship or members of the crew, shall be determined by the laws of the country to which the vessel belongs (p. 364) :

"In the absence of such treaty stipulations, however, the case of foreign seamen is undoubtedly a serious one when they sue for wages under a contract which is generally strict in its character; and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the shipowners, as well as those of the master and crew, as well when the ship is abroad as when she is at home * * *."

Judge Addison Brown in *The Brantford City*, 29 Fed., 373, held in the case of an English vessel, that the law of the forum would apply to determine the rights of the owner of the cargo and owner of the vessel, in case of loss, where it was urged by the owners of the ship that the law of England, which recognized a stipulation in the charter relieving owners of liability for negligent stowing of cargo, would be upheld, Judge Brown applied the law of the forum, to wit: the laws of the United States.

In England, the other day, a seaman, who had deserted his ship in the United States under circumstances that infracted no law of the United States, was sentenced to two years' imprisonment by the act committed outside the territorial jurisdiction—as growing out of the enforcement of Section 4530 R. S.

So, likewise, we find Section 4580, Sections 4582, 4548, 4577, are enactments to protect and care for American seamen in foreign ports. Congress having extended the protecting arm of the law, extra-

territorially in all of these instances, very probably did intend this Section 10a to act as a deterrent against crimping on American crews in foreign ports, the law being otherwise unable to assist them.

Section 8371, Revised Statutes 4580, as amended Act of June 26th, 1884, provides: upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of the seaman for his discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any act of Congress, or "ACCORDING TO THE GENERAL PRINCIPLES OR USAGES OF THE MARITIME LAW AS RECOGNIZED IN THE UNITED STATES, SUCH OFFICER SHALL DISCHARGE SAID SEAMAN, AND REQUIRE FROM THE MASTER OF SAID VESSEL, BEFORE SUCH A CHARGE SHALL BE MADE, THE PAYMENT OF THE SEAMAN'S WAGES WHICH MAY THEN BE DUE HIM."

Apropos of the above statute it occurs to us that under the decision of the learned Court here, a seamen on a vessel in Buenos Ayres, might be discharged in violation of Section 4580 R. S., in such manner as to create a cause of action by the laws of the United States. The act reads: "Under an act of Congress or according to the general principles or usages of the maritime law as recognized in the United States," the seaman upon bringing suit in a court of the United States, would be met with the answer that what was done, though a violation of American law, gave him no remedy, for the acts complained of were performed in a *foreign jurisdiction*.

According to the law as found by the learned Court, the master of an American vessel can engage a crew in a port of the United States for a voyage to South America and return. On arrival at a South American port, by unlawful means he can

drive the crew ashore, as deserters, without their wages; he can go to the crimp, get a crew who sign for a month's advance, and come back to the United States. If he makes the return trip in a month he discharges at New York his crew, and there is no money owed them—there is none paid them. The vessel has made a trip to South America and return and not a cent has been paid to the fifty or more deckhands and firemen who worked the ship. On the outward voyage the crew were forced to desert; on the return trip their wages were paid in a manner lawful in South America.

The Courts of the United States are powerless, because all of the acts were *extraterritorial*—and Congress has failed to give a plain mandate to the Courts.

Was the Seamen's Act intended to be so twisted and contorted as to permit such a scandalous thing? Can it be thought for a moment that an American shipowner or the people of the United States will be benefited, or desire any such system—nobody benefits except the crimp and the master—nobody desires it; of the two, the shipowner is best able to fight the evil.

As a matter of fact, there is no necessity of patronizing the crimp in Buenos Ayres. The laws of Argentina do not require it. It *was not* stipulated as stated by the learned Court that there was a *practical necessity*. The record shows clearly that *there was no necessity*, that many of these very libelants were compelled to go to the crimp by the *master* of the ship himself.

Lastly, as to the intention of Congress, if they intended to leave the American seaman in foreign ports open to this danger of being forced out of the ship because of the desire of the master to ship a

new crew, so that he might personally split the month's pay with the crimp, why did they insert this particular part of the Act, "the payment of such advance and allotment, etc., shall in no case be a defense to a suit or action"?

And does this protect the American seaman in foreign ports—obviously, it does—for if the American shipowner has to pay twice, he will instruct his master to obtain his crew in some other manner next time.

Shipowners in no country are compelled to give advances, they have been *permitted* to do so. They have always been regarded as an evil. They permit and encourage grafting, crimping and imposition against the seaman, their use tends to make the seaman more profligate and helpless, their abolition has long been petitioned by many societies engaged in social welfare work amongst seamen.

The case of *Trinity Church v. United States*, 143 U. S., 457, opinion by Judge Brewer, has been cited for the proposition :

"that a guide to the meaning of a statute is found in the evil which it is designed to remedy, as gathered from contemporaneous events."

The situation as it existed was pressed upon the attention of the legislative body.

Certainly, in the case at bar there can be no question as to the intention of Congress in view of the facts before them; the history of this statute, the advance note evil itself, but that it intended to restrict, as far as possible, the use of advance notes on American vessels or other vessels coming into the United States.

As to the interpretation of statutes, the rule is, that the statutes ought to be so construed that no clause, sentence or word shall be superfluous, void or insignificant.

Montclair v. Ramsdell, 107 U. S., 147.

In construing a statute, every section, provision and clause should be expounded by reference to *every other*, and if possible *every clause or provision be given* and have the effect *contemplated* by the Legislature.

Peck v. Jeness, 7 Howard, 612.

In this connection, of course, we urge it as essential that the whole Seamen's Act of March 4, 1915, be taken into consideration. The provisions permitting seamen on foreign vessels to demand one-half wages in our ports, with a view to equalizing wages up; the provisions abrogating treaties between *foreign countries* and the United States, and the many other sections intended to benefit seamen as a class.

A primary rule of construction is that the Legislature must have been assumed to have meant precisely what in the words of the law it is commonly understood to import.

Endlich on Interpretation of Statutes,
Art. 2.

Judge Veeder said in the court below:

"In 1884 Judge Addison Brown held in *The State of Maine* (D. C.), 22 Fed., 734, that this section did not apply to advances made by an American vessel within a foreign

jurisdiction. On the other hand, Judge Ervin, sitting in the Southern District of Alabama, has recently held in *The Imber-horne* (D. C.), 240 Fed., 830, that the section applies to advances made in foreign ports (even by foreign vessels). It would serve no useful purpose to recapitulate the particular considerations urged in support of the opposing conclusions. The arguments in support of one construction of the statute, are not susceptible of a conclusive answer by the advocate of an opposing construction; a final conclusion can be based only upon a preponderance of the considerations which serve to disclose the intent of Congress. I shall hold that the statutory provision in question applies to the situation presented here, and that the advances in issue, although made in a foreign port, having been made by vessels of the United States, were unlawful and may be recovered by the seamen.

Decree for libelants in each case, with costs, for the amount of the advance payments deducted. Under the circumstances, the claim to the penalty specified in Rev. Stat. U. S., Sec. 4529 (Com. St., Sec. 8320) is denied."

In maritime cases, the law of the flag generally prevails as to contracts.

See:

Pope v. Nickerson, 3 Story, 465, Circuit Court of Appeals.

A vessel owned in *Massachusetts*, being on a voyage from a port in Spain to a port in Pennsylvania, was compelled by stress of weather to put in to *Bermuda*. The master sold the vessel and cargo; in an action by the shippers as against the owners,

it was held that the liability of the owners was governed by the laws of *Massachusetts*.

On page 335 of *Conflict of Laws* Judge Story gives this case:

A French ship borrowed money on bottomry bond at Fayal, a Portuguese port. The vessel proceeded on a voyage to England. The vessel and freight were insufficient to cover the bond. Held that the French law applies to the case as the law of the ship, though under English or Portuguese law the owner was *liable personally for deficiency*; under French law the owner was *not personally liable*.

Judge Ervin in *The Talus*, 242 Fed., 956, said:

"Again, the whole act must be construed together, in order to determine the meaning of any portions thereof, which may be doubtful, if construed alone. In section 10 (a) I find the following provisions:

'The payment of such advance wages or allotment shall not in any case, except as hereafter provided, absolve the vessel, or the master, or the owner thereof, from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.'

The reference here about the full payment of wages, 'after the same shall have been actually earned,' it seems to me, shows that the words used in Section 4530 necessarily have reference to the total wages earned at the time the demand is made, and not to such wages as may be earned by the seaman after the vessel arrives in a port of this country for the purpose of loading or discharging cargo. I therefore hold that the act gives to every seaman the right to demand from the vessel at each port where such vessel, during her voyage, loads or delivers

cargo, one-half of such wages as the seaman shall, at the time of such demand, have earned; that such seaman cannot demand any wages until at least five days' service has been rendered; that he cannot thereafter again demand the half part of such wages as may be subsequently earned until five days have elapsed from the last or prior payment of one-half of his wages.

I do not think that the vessel must be in port five days before the seaman can make his demand, provided there has been five days or more service by the sailor since he signed. I think the words, 'Provided such demand shall not be made before the expiration of, nor oftener than once in five days' mean shall not be made before the expiration of five days of service during which wages were earned, and not oftener than once in each five days thereafter (*The Jacob N. Haskell* [D. C.], 235 Fed., 914; *The London* [D. C.], 238 Fed., 645).

(2) The rights of a seaman in this country are controlled by this act and not by the flag of the vessel on which he is serving (*The Ixion* [D. C.], 237 Fed., 142).

(3) As I am ASKED TO REVIEW THE CONCLUSION I reached in the *Imberhorne* case, and after considering the matter, I still think the conclusion there reached was correct, and as this case may be taken up, and that one was not, I here refer to the portions of my opinion in the *Imberhorne* case, which set out my views as to the reasons advances made by a foreign ship in a foreign port to the sailors when there signed, cannot be allowed when the sailor here claims the half part of such wages as he may have earned when he reaches this port."

See *The Imberhorne*, 240 Fed., 832, as follows:

"(2) This brings us to the main question in the case. In the case of *The State of Maine* (D. C.), 22 Fed., 733, Judge Brown, in construing the Dingley Bill (Act June 26, 1884, C. 121, 23 Stat., 53), holds that, where advances were made to the seamen in a foreign jurisdiction in order to induce them to sign, such advance is not included under the prohibitory clause of the act, and hence such advance on wages should be deducted from the one-half of the wages earned by the seamen. His opinion is strongly and clearly written, and I AGREE IN THE MAIN WITH WHAT HE THERE SAYS IN HOLDING that the penalties declared by this act cannot be imposed upon the master or the vessel for acts done in a foreign jurisdiction. The Dingley Bill was amended by what is commonly called the 'Seamen's Act,' but the provisions of the Dingley Bill as to forbidding advances on seamen's wages do not seem to be changed by the amendment. The *question in my mind is one that does not seem to have been considered by Judge Brown*, and is whether the provisions of Section 10 of the Dingley Act, as amended by the Seamen's Act, does not lay down a rule which a judge in this country is bound to follow in passing upon how one-half of the wages of a seaman is to be calculated. In other words, that even though the penalties declared by the act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seaman's wages that have been earned, WE ARE DIRECTED BY THE TERMS OF THE ACT TO EXCLUDE ANY ADVANCES WHICH MAY HAVE BEEN MADE BY THE SHIP TO THE SEAMAN, WHETHER MADE IN A FOREIGN JURISDICTION OR NOT, AND WE MUST FOLLOW THIS RULE IN CALCULATING THE WAGES OF THE SEAMAN WHEN A LIBEL IS

FILED IN THE ADMIRALTY COURTS OF THIS COUNTRY.

The act, in amending Section 4530, says:

'Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void.'

Section 10(a) of the Dingley Act, as amended, provides:

'That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. * * * The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.' (Capitals mine.)

POINT IV.**Judicial interpretation given to Act of 1884 has little effect.**

The learned Trial Court seems to place considerable importance on this point made by appellant in the court below.

As a matter of fact, as pointed out in our brief on the argument, within two years after the decision of the State of Maine (*supra*) Congress amended the act so as to *permit advances in ports of the United States*. The act was that of January 19th, 1886 (see p. 8827, Vol. 7, U. S. Comp. Statutes). This act provided that a *seaman could make assignment of advances to original creditors* for board and clothing. This vicious act continued in force until 1915—when the present act was restored—so it appears that the judicial force of thirty years' standing is reduced to less than two years, and the State of Maine was never cited or followed in any single case until the present cases were decided by Judge Veeder, when it was *overruled*!

POINT V.

Irrespective of the arguments herein advanced, it would seem that the seamen should recover the wages due them here, to wit, one month's wages each, for the reason that the master or owners have not paid them the full amount of wages earned.

Section 12 of the Act of March 4th, 1915, following immediately after Section 10 of the Act, provides that seamen must be paid irrespective of any

receipt or release executed, which was contrary to the provisions of the laws of the United States:

“No wages due or accrued to any seaman or apprentice shall be subject to attachment or arrestment from any court, and that payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or any attachment, encroachment or arrestment thereon; AND NO ASSIGNMENT OR SALE OF WAGES OR OF SALVAGE ACCRUING THEREON SHALL BIND THE PARTY MAKING THE SAME, EXCEPT SUCH ALLOTMENTS AS ARE AUTHORIZED BY THIS TITLE. THIS SECTION SHALL APPLY TO FISHERMEN EMPLOYED ON FISHING VESSELS AS WELL AS TO SEAMEN, etc.”

It is respectfully urged that there *was no consideration for the execution of the receipt in Buenos Ayres by each of the libelants; that they have actually earned the wages specified in the libel on board an American ship; that they have not been paid these wages.* No valid evidence of payment has been presented to the Trial Court herein, and for this additional reason the decision of the Trial Court should be affirmed.

It is respectfully submitted that the questions involved in this case are of sufficient general material and national importance as to make it desirable that they be passed upon by this Honorable Court, and petitioner therefore prays that the writ of certiorari herein asked for be granted.

SILAS B. AXTELL,
Counsel for Petitioner.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, }
 ss.:

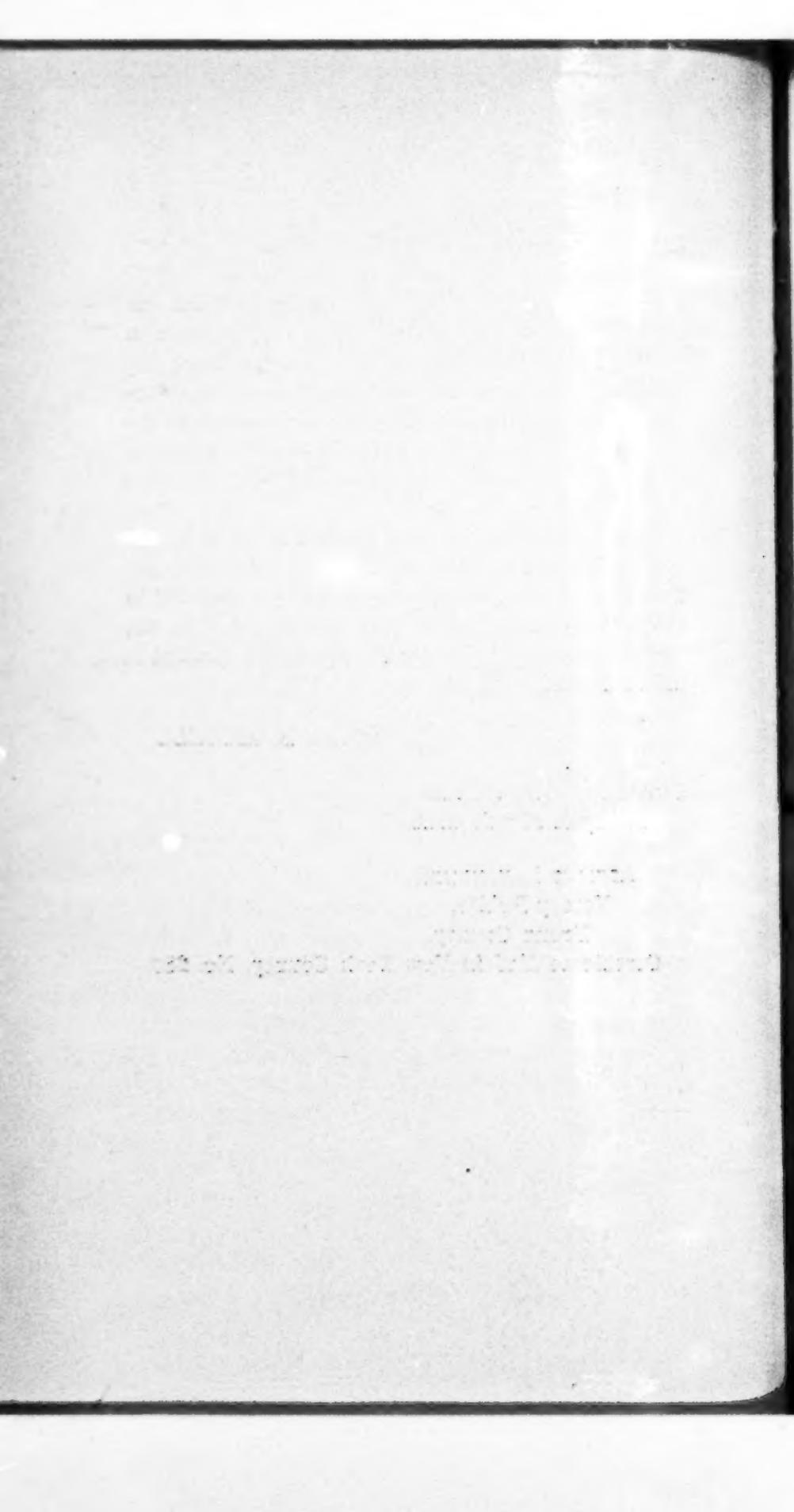
SILAS B. AXTELL, being duly sworn, deposes and says that he is the Counsel for the Petitioners in the within action; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the reason this verification is made by deponent instead of the petitioners is for the reason that the petitioners are seamen and are not within the jurisdiction of the State of New York or the jurisdiction of this honorable court, as deponent is informed and believes.

SILAS B. AXTELL.

Sworn to before me this
9th day of March, 1918.

ARTHUR LAVENBURG,
Notary Public,
Bronx County.
Certificate filed in New York County, No. 280.



FILED
MAR 26 1918JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No.

JOHN HARDY *et al.*,
Libellants-Appellees

AGAINST

Barkentine WINDRUSH,
SHEPARD & MORSE LUMBER COMPANY,
Claimant-Appellant

PAUL NIELSEN *et al.*,
Libellants-Appellees

AGAINST

Sailing Ship RHINE,
RHINE SHIPPING COMPANY,
Claimant-Appellant

No. [REDACTED] 83

No. [REDACTED] 83

MEMORANDUM FOR CLAIMANTS IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

These cases involve no new proposition. They are governed by *The State of Maine*, 22 Fed. Rep. 734, decided in 1884 by Judge Addison Brown in the District Court for the Southern District of New York. That decision has been consistently followed in practice and the rule it lays down has been expressly incorpo-

rated in section 237 of the United States Consular Regulations, as follows:

"237. Advances to Seamen Shipped in Foreign Ports.—The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of the Act referred to in the next preceding paragraph. The final clause of the Act, which declares that this section shall apply as well to foreign vessels as to those of the United States, and that in case of violation a clearance shall be refused them, is a clear indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in the United States alone. The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports. In the settlement of wages due seamen in such cases, therefore, consular officers will take into account what has been paid in advance. 22 Fed. Rep. 734."

The State of Maine was cited to this Court in the briefs filed in *Patterson v. Bark Eudora*, 190 U. S. 169, and accords with this Court's decision in that case, where Mr. Justice Brewer, applying the statute to a British vessel in an American port, referred with approval (pp. 178-179) to the brief filed by the Government emphasizing the difficulty of American vessels securing crews, and consequent detriment to our commerce, unless the statute should be applied to foreign vessels in our ports. The converse situation applies with equal force to American vessels in foreign ports.

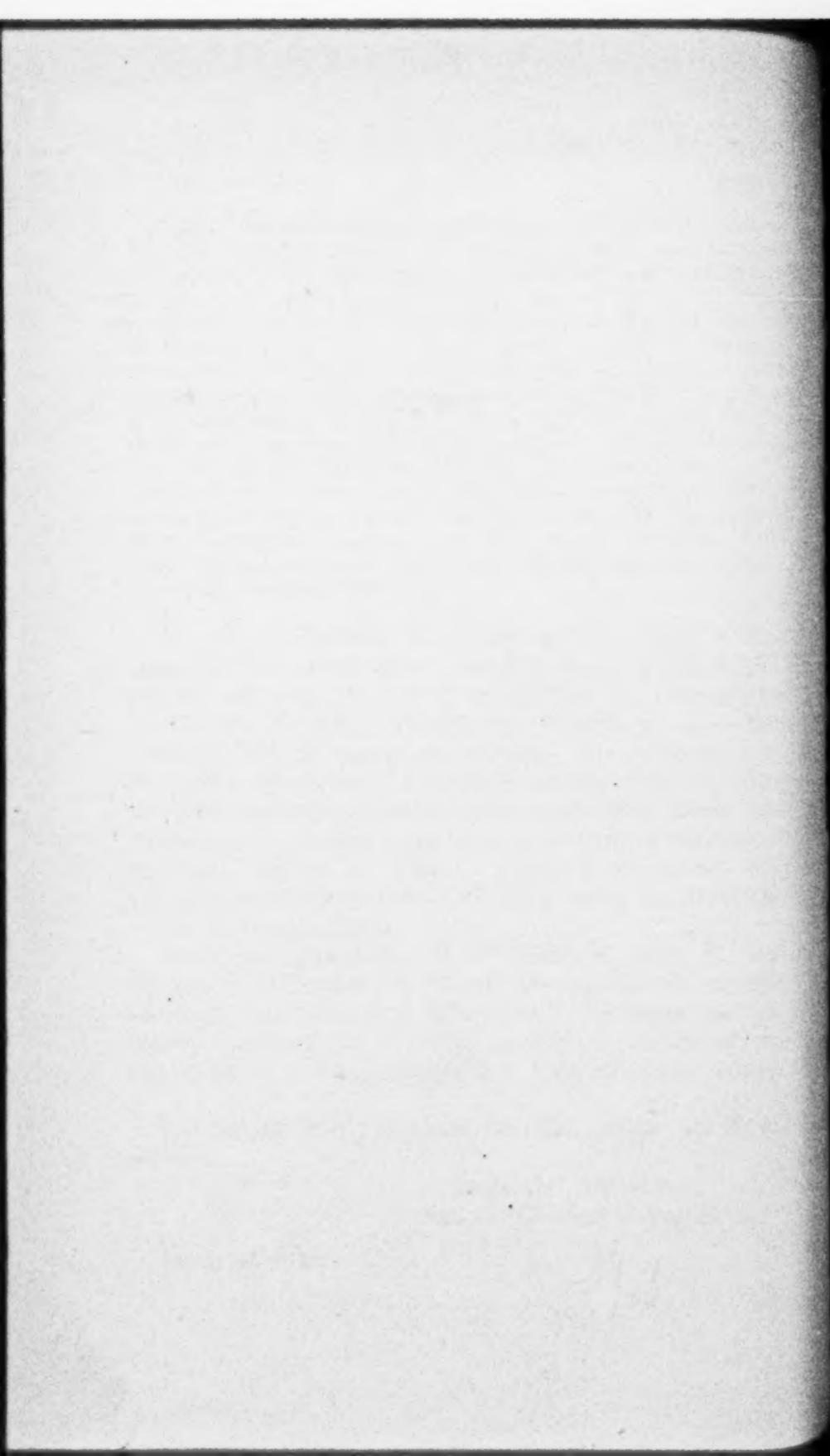
Since the Seamen's Act of March 4, 1915, did not change in any material respect the section concerning advances, the case now stands as if Congress had expressly declared the intention and interpretation of the statute to be as was stated in *The State of Maine, supra*.

It is respectfully submitted that the petition should be denied.

ROSCOE H. HUPPER
Counsel for Claimants-Appellants

March 22, 1918





Supreme Court of the United States

October Term, 1918.

No. ~~393~~ 393 & 394

PAUL NILSON et al.,

Petitioners,

vs.
Selling Ship *Eline*, RHINE SHIPPING COMPANY,
Respondents.

JOHN HARDY et al.,

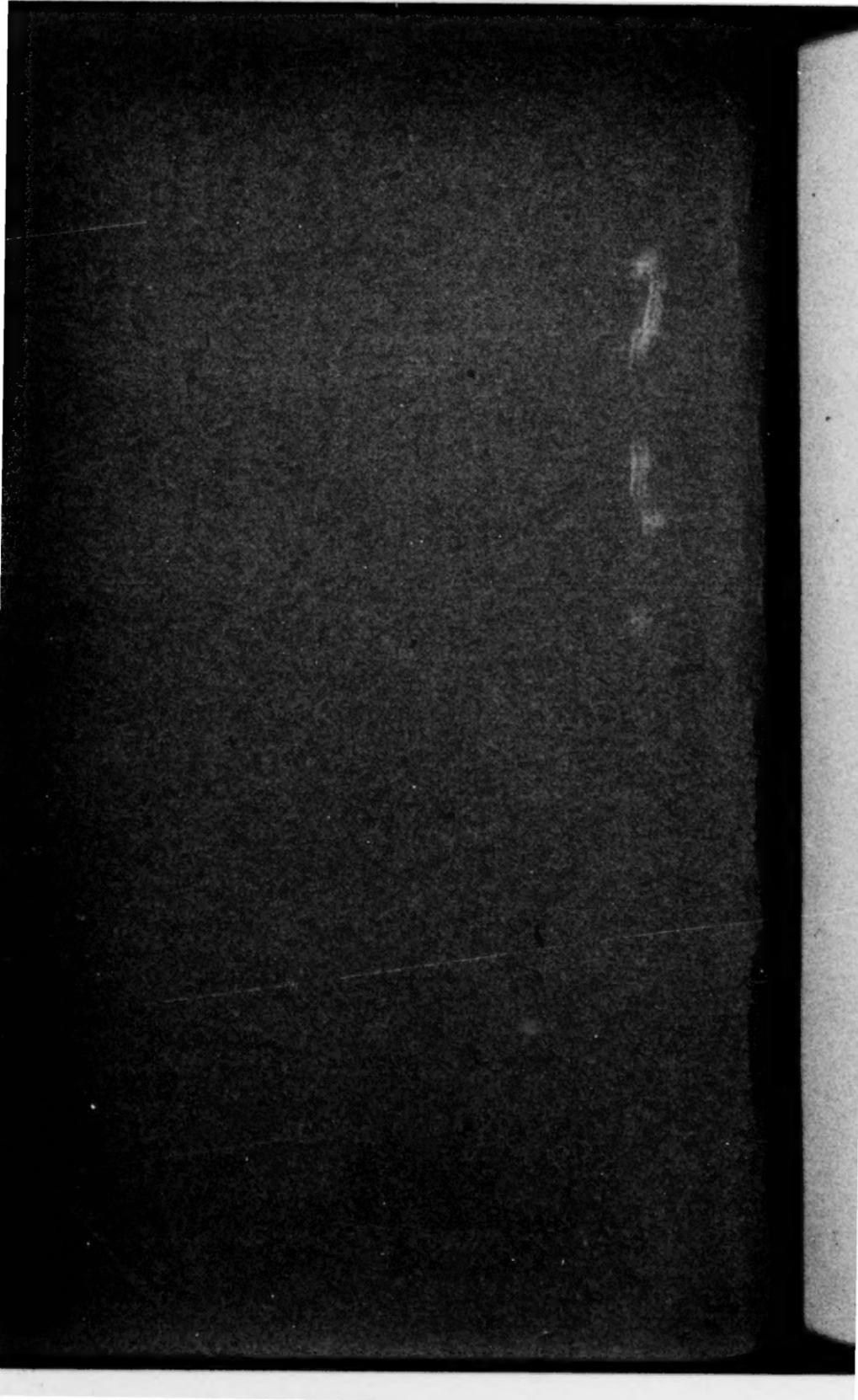
Petitioners,

Barkentine *Woodrow*, SHEPARD & MOORE LUMBER
COMPANY,
Respondents.

NOTICE FOR FURTHER ARGUMENT

SILAS D. STONE,

Prothonotary for Petitioners,



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Supreme Court of the United States

PAUL NEILSON *et al.*,
Petitioners,

against

Sailing Ship *Rhine*, RHINE SHIP-
PING COMPANY,
Respondent.

JOHN HARDY *et al.*,
Petitioners,

against

Barkentine *Windrush*, SHEPARD
& MORSE LUMBER COMPANY,
Respondent.

The above cases come to this Court upon a writ of certiorari from the United States Circuit Court of Appeals for the Second Circuit; petition for certiorari having been filed on March 26, 1918, and the writ of certiorari and return filed April 15, 1918.

Facts.

These cases are alike in facts and therefore involve the same proposition of law. In the case of *Hardy et al.* against *Windrush*, there are joined nine seamen who seek to recover the sum of \$25 each or one month's wages alleged to have been

wrongfully deducted from their account of wages by the master, upon the completion of the voyage at New York on July 13, 1916, except that one of the libelant-petitioners, Johana Goldstein, sues for the recovery of \$40 or one month's wages earned as cook of the ship.

In the action of *Neilson et al.* against *Rhine*, there are joined the claims of ten seamen, each of whom is seeking to recover wages in the sum of \$25, alleged to have been wrongfully deducted from their account of wages, at the completion of the voyage at New York on December 28, 1916.

Petitioners John Hardy *et al.* signed articles on the American bark *Windrush*, at the port of Buenos Ayres, on or about May 10, 1916, for a voyage to New York, there to be discharged and paid off. They signed regular articles of agreement as required by the laws of the United States, before the American Consul at Buenos Ayres. They went aboard said vessel directly and proceeded from Buenos Ayres within two days thereafter. Some of the petitioners were engaged by the master or first officer of the American bark *Windrush* on board the ship at Buenos Ayres before they went to the boarding house of Tommy Moore, and were directed by said master or first officer to go immediately to the boarding house of Tommy Moore (Record, p. 21, fol. 30).

Petitioners Paul Neilson *et al.* signed articles on the American bark *Rhine* before the American Consul at Buenos Ayres on October 7, 1916, for a voyage to New York. That said bark proceeded from the port of Buenos Ayres within two days after said articles were signed and arrived at the Port of New York on December 28, 1916.

Libels were filed in both cases shortly after the arrival of the vessels in New York, for the recovery of one month's wages which were unlawfully

deducted by the owners of the respective vessels to satisfy the notes made by the seamen at Buenos Ayres in payment of money advanced by the master of each vessel to the boarding house keeper, Tommy Moore, at Buenos Ayres.

The District Court rendered a decree for the libelants in each case, which decree was reversed by the Circuit Court of Appeals, and is now before this Court for disposition.

The Act involved is Section 11, Chap. 153 of the Act of March 4, 1915, being 38 Stat. at Large, 1168 to 1169, which was in turn an amendment of Section 10, Chap. 121 of the Act of June 26, 1884, being 23 Stat. at Large, 55-56. The section involved is as follows:

"Sec. 10a. That it shall be and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note or other evidence of indebtedness therefor, to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.

Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and may also be imprisoned for a period of not exceeding six months at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages."

The Statute.

The important differences in the Acts of 1884 and 1915 are indicated in italics:

ACT OF JUNE 26, 1884, c.	ACT OF MARCH 4, 1915,
121, SEC. 10, 23 Stat.	c. 153, SEC. 11, 38 Stat.
L. 55, 56.	L. 1168-69.

"SEC. 11. That section twenty-four of the act entitled 'An act to amend the laws relating to American seaman, for the protection of such seaman, and to promote commerce,' approved December twenty-first, eighteen hundred ninety-eight, be, and is hereby, amended to read as follows:

"SEC. 24. That section ten of chapter one hundred twenty-one of the laws of eighteen hundred eighty-four, as amended by section three of chapter four hundred twenty-one of the laws of eighteen hundred eighty-six, be, and is hereby, amended to read as follows:

"SEC. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages *before leaving the port at which such seaman may be engaged* in advance of the time when he has actually earned the same, or to pay such advance

wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.

"SEC. 10 (a). That it shall be, and is hereby, made unlawful in any case to pay any seaman wages

in advance of the time when he has actually earned the same, or to pay such advance wages, *or to make any order, or note, or other evidence of indebtedness therefor* to any other person, or to pay any person, for the shipment of seamen *when payment is deducted or to be deducted from a seaman's wages.*

Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than

four times the amount of the wages so advanced or remuneration so paid

and may be also imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages: Provided, That this section shall not apply to whaling vessels:

And provided further,

Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than

\$25 nor more than \$100

and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remunera-

tion whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation.

(b) **That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister or children.**

(c) **That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absentee which are made at the commencement of the voyage shall be inserted in the agreement**

and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

(d) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine of not exceeding \$500 or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels

as to vessels of the United States;

(e) *This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.*

and any foreign vessel the master, owner, consignee or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States."

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) Under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

The question and proposition of law involved in these cases is, briefly: Does Section 10a, making unlawful payments of wages to seamen in advance of the time they are earned, apply to advances made in foreign ports on American vessels?

The brief that follows argues that the Act does apply on the grounds:

1st: That advances are against the public policy of the United States and will not be recognized by its courts.

2nd: The contract was one looking to a performance partly on American soil, within the territorial jurisdiction of the United States; that the law of the place of performance governs the said contract.

3rd: That Congress intended the Act to apply to all advances made in foreign ports where the satisfaction of the advance note might be made in the United States.

POINT I.

Irrespective of the intention of Congress to effect advances of wages paid on domestic ships in foreign ports, a contract cannot be given legal effect in a court of the United States which is contrary to the declared public policy of the United States.

This doctrine has been laid down in the Supreme Court of the United States in the case of *The Bank of Augusta v. Earle*, 13 Pet., 519, where the Court was asked to enforce in the United States District Court for the District of Alabama a contract valid by the laws of Georgia, where it was made, and alleged to be invalid in the State of Alabama.

Suit was on a bill of exchange purchased in Alabama by an agent of a Georgia bank. Alabama did not give power to any but banks to purchase bills of exchange, but it did not declare unlawful the purchase of notes by other than banks.

While the Court here enforced the contract on the ground that the statutes of Alabama were not plain in their condemnation of such contracts, the Court assumed that the rule relating to recognition by comity by the laws of a foreign state was such that a state might refuse to recognize and enforce a contract valid by law of the state where made, but inconsistent with or contrary to the public policy of the state of the forum.

This rule is clearly stated in the District Court case of *Swann v. Swann*, E. D. of Arkansas, 21 Fed., 299, where Judge Caldwell holds that contracts against the settled public policy of the state will not be enforced, although they may be valid by the law of the place where they are made. The Court cited as its authority *Vidal v. Girard's Ex'ers*, 2 How., 127, page 198.

The suit in the *Swann* case involved a note which was executed on a Sunday in Tennessee, where such notes were valid. Enforcement of the note was sought in Arkansas. The Court held the note enforceable because the statutes or laws of Arkansas did not make invalid a note executed on Sunday.

This law is practically universally applied in every jurisdiction throughout the Union. Its justification has been stated by Justice Fry in the English case of *Rousillon v. Rousillon*, 14 Ch. D., 351, page 369:

"It appears to me, however, plain on general principles, that this court will not enforce a contract against the public policy of this country wherever it may be made. It seems to me almost absurd to suppose that the courts of this country should enforce a contract which they consider to be against its public policy simply because it happens to have been made somewhere else."

The rule has many applications. It has been applied to:

1. Contracts of marriage between persons within the prohibited degrees.

U. S. v. Rodgers, 109 Fed., 886.

Sutton v. Warren, 10 Metc., 451.

Medway v. Needham, 16 Mass., 157.

2. Marriages between whites and blacks.

Dupre v. Boulard, 10 La. Ann., 411.

State v. Kennedy, 76 Mo., 251.

3. Separation agreements.

Palmer v. Palmer, 26 Utah, 31.

Hope v. Hope, 8 De G. M. G., 731.

4. Contracts of married women.

Hanover National Bank v. Howell, 118 N. C., 271.

Hayden v. Stone, 13 R. I., 106.

5. Agreements involving chancery.

The Clara A. McIntyre, 94 Fed., 552.

Holidays Case, 27 Fed., 830.

6. Contracts in restraint of trade.

Union Locomotive etc. Co. v. Erie R. Co.,
37 N. J. L., 23 (where a contract between
a railroad company in New Jersey and
certain individuals giving the latter the
exclusive right of transporting certain
kinds of freight over the railroad had
been made in New York, and had been

sustained by the Courts of that State, but in an action for the breach of some of its provisions in New Jersey it was held that the contract was void because against the public policy of New Jersey and would not be enforced, although valid where made).

Bath Gas Light Co. v. Rowland, 84 A. D., 563; aff. 178 N. Y., 631, mem.

Rousillon v. Same, 14 Ch. D., 351 (where parties had entered into an agreement in France in restraint of trade, and although the agreement was perfectly valid in France, where the common-law doctrine regarding such contracts as against public policy is unknown, it was held that the agreement would not be enforced by an English court).

7. Contracts giving preferences to creditors.

Stricker v. Tinkham, 35 Ga., 176.

Thurston v. Rosenfield, 42 No., 474.

Moore v. Bonnell, 31 N. J. L., 90.

Varnum v. Camp, 13 N. J. L., 32.

Dearing v. McKinnon Dash etc., 165 N. Y., 78, at page 87.

8. Agreements to influence public officials.

Oscanyan v. Winchester Repeating Arms Co., 103 U. S., 261 (where plaintiff, an officer of the Turkish Government, had made a contract with defendant, a manufacturer of firearms, under which he was to receive a commission on such as he

could induce that government to purchase, and in a suit on the contract it was held by the Supreme Court of the United States that even were the contract made in Turkey and valid there, the Turkish Government being willing that its officers should receive bribes for official action, yet contracts of this kind, being against the public policy of this country, would not be enforced in our courts).

9. Gambling contracts.

One of the leading cases under this heading and one involving a statutory provision which resembles the one at bar, is that of *Lemonius v. Mayer*, 71 Mass., 514, where a statute of Mississippi declared the making of gambling contracts unlawful, and further provided:

“The courts of Mississippi shall not be open for the enforcement of any rights under such contracts.”

This is strikingly similar to that portion of Section 10-E of the Seaman's Act, which reads:

“The payment of such advance wages or allotment shall in no case * * * absolve the vessel or the master or owner thereof, from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages.”

The United States Courts follow the same law.

Kansas Savings Bank v. National Bank of Commerce, 38 Fed., 800.

Here the suit was one for the payment of a certificate of deposit which was negotiated for a gambling debt. The Court, after holding that the consideration for the certificate was unlawful, went further and ruled that, far from leaving the parties to a gambling contract where it found them, it would restore to the loser the certificate of deposit given by him in payment of his loss.

The seamen here are in precisely the same position. They executed a note to the master, payable from their wages upon arrival in a port of the United States. The question is *not* as stated by the Circuit Court in its opinion:

"Libelants demand part of their wages in accordance with the law of the United States; Respondents' answer—we paid you that part in Argentine in accordance with the law of that country; libelants' reply the law of the United States refuses to recognize that lawful and completed transaction."

But is rather this:

Libelants demand the whole of the wages they have earned—respondents' reply, we used part of your lawfully earned wages to satisfy a note of yours which you executed in a foreign country.

Libelants' reply—the note cannot be recognized as valid in courts of the United States, where the contract was to be performed, *i. e.*, where the payment of the note was contemplated.

The seamen are not in a position where they must go to the Court and beg the Court to alter the *status quo*. The respondents had in their possession money belonging to the seamen—that is, wages earned, and they took advantage of this possession to satisfy, out of said wages, after arrival in a

United States port, the notes which the seamen executed in Buenos Ayres.

In a suit for wages lawfully earned, respondents now ask this Court to recognize and sanction the advantage they took of the seamen. The Court, as did the District Court in the *Kansas* case just cited, should restore to the libelants their advance notes, payment of which was contemplated in the United States and consideration for which is not recognized as legal in the United States and compel the respondents to pay the lawfully earned wages, the recovery of which is the object of these suits.

The Court, in the *Kansas* case, aptly said:

"The law of public preservation, like the natural law of self-preservation, forbids that any nation or state should be bound to recognize and enforce any contract no matter where made, inimical or injurious to its own interests or hurtful or pernicious to its moral sense and public policy."

Also in the case of *Williamson v. Majors*, 169 Fed., 754, the Circuit Court of Appeals for the 5th Circuit refused to enforce a gambling contract.

10: Agreements compounding crime.

Wight v. Rindskopf, 43 Wis., 344, page 364 (where a person brought a suit in Wisconsin for legal services rendered defendant, and the proof was that the object of the service was the compounding of a crime, defendant and others being at the time under indictment in the Federal Courts for violation of the United States revenue laws, it was held that the agreement under which the service was

rendered was void for illegality, such contracts being contrary to public policy of the State. On rehearing, it was brought to the attention of the Court that the Federal statutes expressly authorize such compromises with the Government, with the consent of the Secretary of the Treasury and the Attorney-General. The Supreme Court admitted that the statute might be binding on the Federal Judges in actions for their courts, but refused to give it any recognition in the State Court, saying:

"We could not more enforce contracts compounding or tending to compound crime coming from the federal jurisdiction, than contracts of polygamy from the jurisdiction of Utah or of Turkey").

The rule is not affected by the fact that the objectionable parts of the contracts have been executed and that those remaining are innocuous.

Hope v. Hope, 8 De G. M. & G., 731, 44 Reprint 572 (where a husband and wife, living in France, made a contract in that country, which provided for two things, which by the law of England were illegal, namely, the collusive conduct of a divorce suit, and the abandonment by the husband of the custody of his children, and the English Courts refused to enforce any part of it, holding that, if a court of one country is called on to enforce a contract entered into in an-

other, it is not enough that the contract should be valid according to the laws of the latter, for if any part of the contract is *inconsistent with the law and the policy of the former, the contract will not be enforced, even as to another part of it which may not be open to this objection and may be the only part remaining to be performed.*

This last corollary covers precisely the objection made by the Circuit Court that the contracts of the seamen are executed or partly so. The fact remains that the contracts were not wholly executed, for the work was to be performed on the high seas on an American ship, and after the notes were given and the seamen's wages were not payable until arrival in a port of the United States.

The law is nowhere better stated than in the case of the *Kensington*, 183 U. S., 263. A contract had been executed in Belgium between a passenger and shipowner exempting the latter from liability for any negligence on the part of the shipowner, his agents, etc., and it was stipulated that "all questions arising hereunder are to be settled according to the Belgian Law with reference to which this contract is made." A libel was subsequently filed against the ship in the District Court for the Southern District of New York to recover the value of the passenger's baggage, which it was alleged the ship had wrongfully failed to deliver.

It was contended that the contract having been entered into in Belgium and valid under the Belgian Law, there could be no recovery in courts of the United States, where such conditions and stipu-

lations in a carrier's contract are in conflict with public policy. The Court, on page 269, says:

"The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even though to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of contracting parties can the public policy of a country be set at naught. *Story, Conflict of Laws*, secs. 38, 244. Whilst, as said in *Knott v. Botany Mills*, the previous decisions of this court have not called for the application of the rule of public policy to the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this court. In *Liverpool & Great Western Steam Co. v. Phoenix Insurance Co.*, 129 U. S., 397, the question arose, whether conditions, exempting a carrier from responsibility for loss caused by the neglect of himself, or his servants, could be enforced in the courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions, exempting from responsibility for loss, arising from negligence, were valid, by the laws of New York, and would have been upheld in the courts of that State, it was decided that, in view of the rule of public policy applied by

the courts of the United States, effect would not be given to the conditions. In the very nature of things, the premises, upon which this decision must rest, is controlling here, unless it be said that a contract, made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the courts of the United States, than would be a similar contract, validly made, in one of the States of the Union. Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offence against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guild Hall*, 58 Fed. Rep., 796, it was held that a stipulation in a bill of lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the courts of the United States, although such a condition was valid under the law of Holland. In *The Glenmavis*, 69 Fed. Rep., 472, the same rule was applied to a bill of lading issued in Germany by a British ship for goods consigned to Philadelphia, etc."

What determines the public policy of a state?

While the term "settled public policy," as used in the discussion of questions concerning the conflict of laws, is subject at times to some uncertainty of judicial definition, the Supreme Court of the United States has laid down a simple test, easy of application.

In the case of *Vidal v. Girard's Ex'ers*, 2 How., 127, the Court, in replying to an agreement of Mr. Webster, said:

"Nor are we at liberty to look at the general conditions of the supposed public interests and policies of Pennsylvania, upon this subject, *beyond what its constitution and laws make known to us.*"

The District Court in the case of *Swann v. Swann, supra*, at page 301 said:

"The only authentic and admissible evidence of the public policy of a state on any given subject are its constitution, laws and judicial decisions. The public policy of a state, of which courts take notice, and to which they give effect, must be deduced from these sources."

"The public policy of a state or nation is to be found in its constitution and its statutes."

Ziegler v. Illinois Bank, 245 Ill., 180.

It is also obvious that no state will give effect to the laws of another on the principles of comity when the effect would be *injurious to the State or its citizens.*

Wodward v. Roane, 23 Ark., 523.

This principle has varied applications and is universally sustained by the authorities of practically every state.

The leading New York case on this is *Marshal v. Sherman*, 148 N. Y., 9, and the English case of *Hill v. Spear*, 50 N. H., 253, where the Court, at page 262, says:

"While the comity of nations and states will always regard with respect and consideration the laws and customs of other communities, still its own interests and welfare of its own citizens will nevertheless be held by every state in paramount consideration."

Marshal v. Sherman, supra, holds that it applies exclusively to each sovereignty to determine for itself whether it can enforce a foreign law, without at the same time neglecting the duty that it owes to its own citizens and subjects. The New York Court of Appeals here refused to enforce by right of comity, a Kansas statute against a stockholder to satisfy corporate debts when the statutes of New York contained no similar provision.

Is the practice of crimping against the public policy of the United States?

Crimping is a vile and pernicious practice, destructive of a free and clean class of seamen. It involves a greater moral turpitude than gambling, for the gambler is one from choice, while the seaman is a helpless victim of circumstances.

Can it be said that the United States has no policy in regard to this insidious evil, when Congress has not only ruled that it shall not deprive a seaman of his justly earned wages, but has in addition declared it to be a crime and punishable as such?

The Supreme Court itself has had occasion to characterize this practice. In *Patterson v. Bark Eudora*, 190 U. S., 169, where this Court held advances made to seamen on foreign vessels in ports of the United States were illegal, the Court says on page 175:

"If the necessities of the public justify the enforcement of a sailor's contract by excep-

tional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, *not merely of this nation but of the world*, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

POINT II.

The contract was one looking to a performance partly on board an American vessel while on the high seas and partly within the territorial jurisdiction of the United States; that the law of the place of performance governs the said contract.

More briefly the rule may be stated as follows: The law of the place of the performance of the contract governs its interpretation.

Where the contract is made in one country and is to be performed either wholly or partly in another, the proper law of the contract may be pre-

sumed to be the law of the country where performance is to take place—that is the *lex loci solutionis* or as per Lord Esher in the English case of *Chatenay v. Brazilian Sub. Tel. Co.*, 1881, 1 Q. B., 79, at 82:

"The business sense of all business men has come to this conclusion, that if a contract is made in one country to be carried out between the parties in another country, either in whole or in part, unless there appears something to the contrary, it is to be concluded that the parties must have intended that it should be carried out according to the law of that other country."

The case of *Hall v. Cordell*, 142 U. S., 116 (1891), illustrates this principle. In that case it was held that the obligation to perform a verbal agreement made in Missouri to accept and pay on presentation at the place of business of the promisor in Illinois, all drafts drawn upon him by the promisee for live stock to be consigned by the promisee from Missouri or promisor in Illinois, is to be determined by the law of Illinois, the place of performance and not by the law of Missouri where it was made.

Also in *N. Y. & Va. State Stock Bank v. Gibson*, 5 Duer, 574, at 583 the Court said:

"The general rule of law would lead us to the conclusion that the validity of a promise to accept a bill of exchange depends upon the law of the place where the bill is to be accepted and paid."

Also:

Pritchard v. Norton, 106 U. S., 124,

where New York was the state in which an indemnity bond was executed and Louisiana, the state in which the parties contemplated enforcement of its obligations, the Louisiana law was held to apply.

This same principle of law has been applied in practically every jurisdiction of the United States. Citations are superfluous and only a few are given:

Union Nat. Bank v. Chapman, 169 N. Y., 538.

Old Dominion etc. Co. v. Bigelow, 203 Mass., 159.

Chicago State Bank v. King, 244 Pa., 29.

The reason for this rule is that the consideration, *i. e.*, performance, depends for its validity upon the law of the place of performance.

Hubbard v. Sayre, 105 Ala., 540.

The application of this principle to the case at bar is simple. The contract here in question was the note signed by the seamen in Buenos Ayres, for a consideration not recognized by the laws of the United States and payable at a port of the United States.

There is no doubt that both parties—that is, the master and the seamen—contemplated the performance of their contract—that is, the payment by the seamen of the note in an American port. The American law, therefore, governs. Consideration for the note being illegal by the laws of the United States, the Court cannot sanction its satisfaction out of lawfully earned wages of the seamen.

Under the principle in the case of *Kansas Savings Bank v. National Bank of Commerce, supra*, the Court should here restore the advance notes to the

libelants and decree the full recovery of their wages lawfully earned.

POINT III.

That Congress intended the Act to apply to all advances made in foreign ports where the satisfaction of the advance note might be made in the United States.

As indirectly stated by Judge Hough in the majority opinion in the Circuit Court of Appeals, the design of the statute to give relief is more dominant than the design to inflict punishment. The penal provisions of a statute do not necessarily make it penal in its whole intent or for all purposes.

Hyde v. Cogan, 2 Doug., 699.
Short v. Hubbard, 2 Bing., 349.

Also a statute which is made for the good of the public, though it is penal, ought to receive an equitable and liberal contention.

Tyner v. U. S., 23 App. Cases, D. C., 324.

In affording relief in a civil suit under a statute, both remedial and penal, the Court will not be bound by any narrow technical or forced interpretation by which it might have been bound were the statute alone penal.

Northern Securities Co. v. U. S., 193 U. S., 197.

The Supreme Court of the United States has illustrated the application of this principle in the case

of *United States v. Twenty-five Packages of Panama Hats*, 231 U. S., 358, which was a proceeding to forfeit certain merchandise under an act of Congress of August 5th, 1909 (36 Stat. 11, 97), because of an attempt to introduce imported merchandise into the commerce of the United States by means of fraudulent invoices made by a consignor in a foreign country. It was argued that the goods could only be forfeited for the same acts that would support an indictment, and, inasmuch as the consignor could not be prosecuted in this country for making a false invoice in a foreign country, neither could the goods be forfeited for the same conduct in the same place, and, in answer to that argument, the Court, on page 362, says:

“But while punishment for the crime and forfeiture of the goods will often be coincident penalties, *they are not necessarily so*, nor is there any inconsistency in proceeding against the *res* if the wrongdoer is beyond the jurisdiction of the court. The very fact that the criminal provision of the statute does not operate extra-territorially against the consignor, would be a reason why the goods themselves should be subjected to forfeiture on arrival here.” (And cases cited.)

The Court, under these authorities, is free to place a liberal interpretation on this section. The suit is here a civil one and giving extra-territorial effect to this section in the present civil case does not imply that respondents would be found guilty in a criminal proceeding under a strict interpretation of the same clause.

A liberal interpretation would take into consideration the evil which it was the design of Congress to remedy as gathered from the events leading up to its passage.

Trinity Church v. Brewer, 143 U. S., 457.
See *American Sea Power and the Seaman's*

Act by Andrew Furuseth. Also *American Seamen* by Hon. John E. Raker
(appended herewith).

The Courts may, in construing a statute, recur to the history of the times when it was passed, and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it.

U. S. v. Union Pacific, 91 U. S., 72.

Citing:

Aldridge v. Williams, 3 How., 24.
Preston v. Broder, 1 Wheat., 120.

A statute should also be read with reference to its leading idea, and its predominant purpose will prevail over the literal import of particular terms or clauses, operating as a reason for expanding the significance of doubtful clauses, so that all interpretations may accord with the spirit of the entire Act.

State ex rel. Minn., St. Paul & S. S. M. R. Co. v. R. R. Com., 137 Wis., 80.
People v. Long Island R. R., 139 N. Y., 130.

See also:

Inka v. Schlosser, 97 Ill. App., 222.
Groff v. Miller, 20 App. D. C., 23.

Even a cursory review of the various sections of this Act reveals in Congress a zealous regard for the uplift, protection and emancipation of American seamen. The legislation against crimping is but one of the many reforms. For instance:

By Section 4580 U. S. R. St.: If a seaman is discharged abroad it shall be done before the Consul, who shall see that the seaman gets his wages and that his rights are protected.

Section 4581 U. S. R. St.: Provides a penalty against the Consul for failure to perform his duty.

Section 4582 U. S. R. St.: Renders owners liable to penalty for a neglect of master to perform certain duties, where an American vessel is sold abroad.

Section 4511: *Provides manner in which seamen shall be engaged in domestic ports on American vessels.*

Section 4517 U. S. R. St.: Provides that seamen shipped abroad before Consul or agent on American vessels shall be engaged in the same manner as prescribed by Section 4511 for shipment of seamen in American ports before U. S. Shipping Commissioner.

So, likewise, we find Section 4580, Sections 4582, 4548, 4577, are enactments to protect and care for American seamen in foreign ports. Congress having extended the protecting arm of the law, extra-territorially in all of these instances, very probably did intend this Section 10a to act as a deterrent against crimping on American crews in foreign ports, the law being otherwise unable to assist them.

Section 8371, Revised Statutes 4580, as amended Act of June 26th, 1884, provides: Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of the seaman for his discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any

act of Congress, or "ACCORDING TO THE GENERAL PRINCIPLES OR USAGES OF THE MARITIME LAW AS RECOGNIZED IN THE UNITED STATES, SUCH OFFICER SHALL DISCHARGE SAID SEAMAN, AND REQUIRE FROM THE MASTER OF SAID VESSEL, BEFORE SUCH A CHARGE SHALL BE MADE, THE PAYMENT OF THE SEAMAN'S WAGES WHICH MAY THEN BE DUE HIM."

The primary rule of construction is that the Legislature may be assumed to have meant precisely what in the words of the law it is commonly understood to import.

Endlich on Interpretation of Statutes,
Art 2.

U. S. v. Colorado & N. W. R. Co., 157 Fed.,
321.

Can words be plainer than in the following:

"* * * * the rules governing
the engagement of seamen before
a shipping commissioner in the
United States, shall apply to such
engagements made before a consular
officer or commercial agent"
(Act of June 7th, 1872, Chap. 322, Sec. 15,
17 Stat. at Large, 275).

The "such engagements" refers to engagements of seamen in foreign ports on American vessels.

"The payment of such advance wages or allotment shall *in no case* * * * absolve the vessel or the master or owner thereof from the *full* payment of wages after the same shall have been actually earned and *shall be no defense to a libel suit or action for the recovery of such wages.*"

Section 10 is part of an Act which was designed by Congress as a regulation of foreign commerce.

That this was the intention of Congress is apparent from a review of the whole statute and a consideration of *Gibbon v. Ogden*, 9 Wheat., 1, and *The Passenger Case*, 7 How., 283.

If the Act be regarded as strictly penal, Congress, under the power of the commerce clause, has ample authority to punish for extra-territorial offenses.

"Especially may the power to punish citizens for acts done abroad be exercised where the penal act or offense is intended to take effect and operate within the limits of the United States, and would be cognizable by the Federal Courts if committed here."

U. S. v. Craig, 28 Fed., 795, at p. 801.

A statute was involved in the case of *U. S. v. Gordon*, 5 Blatch., 18, which did not by its terms have extra-territorial application. The statute simply made it unlawful for a *citizen* employed on a foreign ship or *any person* employed on an American ship to engage in the slave trade. The Court held liable under such statute a defendant employed on an American ship who violated the provisions of said Act while the ship was in the River Congo, Africa. The Supreme Court held that the statute covered an American ship or an American citizen on a foreign ship in the Congo River of Africa.

This power of Congress under the commercial clause has been stated in the rule that the law follows the flag.

The Supreme Court has held in the case of *The Belgenland*, 114 U. S., 325, that in all matters that affect parties on board a ship or members of the

crew shall be determined by the laws of the country to which the vessel belongs (p. 364) :

"In the absence of such treaty stipulations, however, the case of foreign seamen is undoubtedly a serious one when they sue for wages under a contract which is generally strict in its character; and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the shipowners, as well as those of the master and crew, as well when the ship is abroad as when she is at home * * *."

Judge Addison Brown in *The Brantford City*, 29 Fed., 373, held in the case of an English vessel, that the law of the forum would apply to determine the rights of the owner of the cargo and owner of the vessel, in case of loss, where it was urged by the owners of the ship that the law of England, which recognized a stipulation in the charter relieving owners of liability for negligent stowing of cargo, would be upheld, Judge Brown applied the law of the forum, to wit, the laws of the United States.

It is evident from these conditions that not only had Congress ample power to enact Section 10a with the intent that it have extra-territorial effect, but that such is the actual scope and purpose of said section.

A comparison of the Dingley Act, of which the section in question was an amendment, reveals that the words now found in Subsection E of the present Act, "While in the waters of the United States," were not in the original Dingley Act.

It is a fair inference from the insertion of such a clause in the 1915 Act that Congress had in mind, in limiting its application to foreign vessels to the waters of the United States, that the Act apply

universally to American vessels. See dissenting opinion of Judge Hand, page 49, fol. 71, Transcript of Record in *Hardy-Windrush* case, where he says:

"If Section 10(a) had not been amended in the clause here in question, I should have felt bound by the construction which Judge Brown had put upon it in *The State of Maine*, 22 Fed. R., 903, under the well-settled rule that a prior accepted interpretation of the statute is incorporated into its re-enactment. Moreover, I think that Judge Brown's decision was certainly right at the time he made it. His fourth reason for excluding American ships from the operation of the statute while in foreign ports seems to me unanswerable. The statute did not discriminate as he says between foreign vessels and those of the United States and it was necessary to give the general language of the statute the same application to one class as to the other.

Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in *Patterson against the Bark Eudora*, 190 U. S., 169, held that foreign vessels were bound and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause 'while in waters of the United States' in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase 'foreign vessels.' If the statute had read 'as well to foreign vessels as to vessels in the United States while in waters of the United States' there could have been no doubt but the limitation by its position directly affecting one class seems to me to give the other its general meaning unless there was good contrary reason in the context."

This argument is not weakened by the attempt of Justice Hough in the Circuit Court opinion to reduce it to an absurdity (p. 47, fol. 68, *Hardy v. Windrush* record) in applying the same argument to the section relating to the clearances of said vessels, as the latter section is contained in both Acts (see p. 47, fol. 68, of the Transcript of Record).

The Circuit Court was also in error in supposing that it was stipulated that there was a practical necessity for patronizing the crimp in Buenos Ayres. There was no such stipulation. What was stipulated was that the master, if called to testify, would state that there was a necessity.

The only other decisions bearing remotely on the interpretation of this precise section are:

The Talus, 242 Fed., 976.

The Imberhorne, 232 Fed., 842.

In both of these cases Judge Ervin held that the section applied to foreign vessels, and that where foreign ship owners found themselves in our Courts in the position of asking recognition for validity to advances made in foreign ports, the approval of Courts of the United States could not be given in view of the inclusively prohibitive feature of the Act, as follows:

"Payment of such advance wages or allotment shall in no case absolve the vessel or master and owner thereof from the full payment of wages after the same shall be actually earned, and shall be no defense to a libel, suit, or action for recovery of such wages."

And part of his opinion in the *Imberhorne* case is as follows:

"(2) This brings us to the main question in the case. In the case of *The State of Maine* (D. C.), 22 Fed., 733, Judge Brown, in construing the Dingley Bill (Act June 26, 1884, C. 121, 23 Stat., 53), holds that, where advances were made to the seamen in a foreign jurisdiction in order to induce them to sign, such advance is not included under the prohibitory clause of the act, and hence such advance on wages should be deducted from the one-half of the wages earned by the seamen. His opinion is strongly and clearly written, and I AGREE IN THE MAIN WITH WHAT HE THERE SAYS IN HOLDING that the penalties declared by this act cannot be imposed upon the master or the vessel for acts done in a foreign jurisdiction. The Dingley Bill was amended by what is commonly called the 'Seamen's Act,' but the provisions of the Dingley Bill, as to forbidding advances on seamen's wages do not seem to be changed by the amendment. The *question in my mind is one that does not seem to have been considered by Judge Brown*, and is whether the provisions of Section 10 of the Dingley Act, as amended by the Seamen's Act, does not lay down a rule which a judge in this country is bound to follow in passing upon how one-half of the wages of a seaman is to be calculated. In other words, that even though the penalties declared by the act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seaman's wages that have been earned, WE ARE DIRECTED BY THE TERMS OF THE ACT TO EXCLUDE ANY ADVANCES WHICH MAY HAVE BEEN MADE BY THE SHIP TO THE SEAMAN, WHETHER MADE IN A FOREIGN JURISDICTION OR NOT, AND WE MUST FOLLOW THIS RULE IN CALCULATING

THE WAGES OF THE SEAMAN WHEN A LIBEL IS FILED IN THE ADMIRALTY COURTS OF THIS COUNTRY."

CONCLUSION.

It is respectfully submitted that the meaning and intent of Section 10a should be considered together with the main purposes of the Seamen's Act, which are expressed in the title, viz.: "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

This legislation has been pending before Congress in more or less the same form, in which it eventually became a law, for twenty years. Our sea power has dwindled. Since the Civil War our people have been busy developing the natural resources of the country, and have not attempted to develop a merchant marine. When the subject did receive careful consideration of the members of Congress of 1915, it was discovered that the difference in wages necessarily obtaining because of treaty provisions on foreign and domestic vessels was a formidable barrier to the development of our sea power.

The provisions of the Seamen's Act directing the President of the United States to abrogate our treaties with all foreign nations; dealing with the arrest of deserting seamen in our ports, together with the enactment of Section 4530, giving the seamen the right to half of their earned wages then due, was intended to, and has equalized wages on all vessels engaged in American trade.

The economic law of supply and demand has been given free operation. The American ship owner to-day can obtain his crews as cheaply as can foreign ship owners.

The advance note system, whether existing in foreign or domestic ports, has a tendency to force wages down. Congress sought to further the interests of American ship owners and seamen as well, by stamping out as effectually as possible this evil practice, prohibiting them in the United States, and providing, or attempting to provide, the payment of advance wages, without the United States, shall in *no case receive the sanction of our Courts*.

The abolition of the advance note system is merely one part of the reformation intended by Congress to produce and make possible the continued existence of a body of clean, strong, American seamen.

"Sea power is in the seamen. Ships are but tools in the hands of the men that use them. The nation that nourishes and protects its seamen possesses sea power" (*Fornseth on Sea Power and the Seaman's Act*).

Respectfully submitted,

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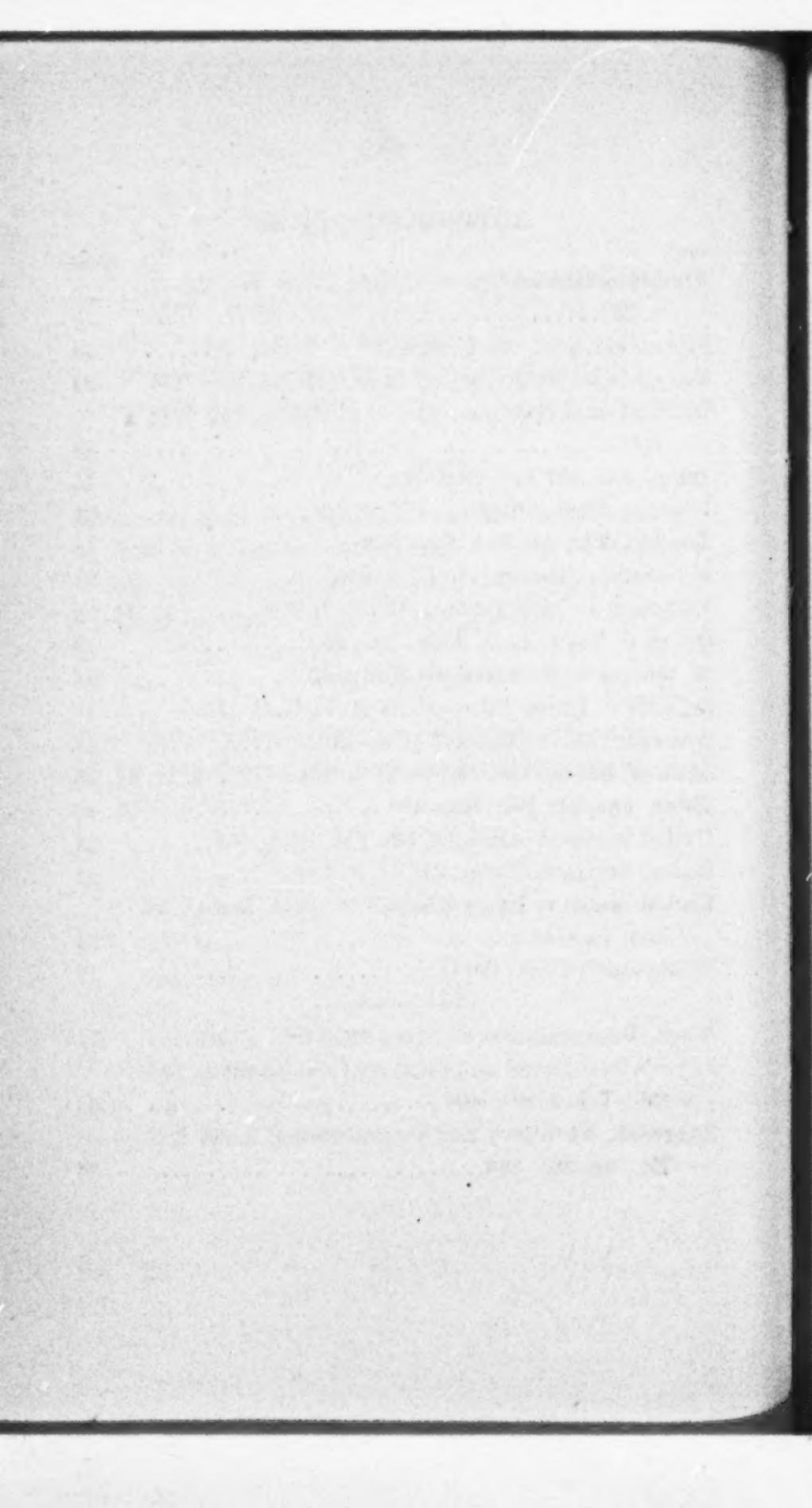
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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1918

PAUL NEILSON *et al.*, Petitioners
(Libellants-Appellees)

v.

RHINE SHIPPING COMPANY, Owner of the No. 393
Sailing Ship RHINE,
Respondent
(Claimant-Appellant)

JOHN HARDY *et al.*, Petitioners
(Libellants-Appellees)
v.

SHEPARD & MORSE LUMBER COMPANY, No. 394
Owner of the Barkentine WINDRUSH,
Respondent
(Claimant-Appellant)

STATEMENT

The facts are covered by stipulations (Neilson Record [No. 393] pp. 6-8; Hardy Record [No. 394] pp. 6-7). They are shortly stated in the District Judge's opinion as follows:

"In the first case Paul Neilson and nine other seamen sue for the recovery of wages claimed to be due them from the bark *Rhine*. It appears that they shipped on

the American bark *Rhine*, at Buenos Aires, Oct. 7, 1916, for a voyage to New York, at the rate of \$25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Aires is controlled by certain shipping masters, to one of whom the libellants, in accordance with the usual custom and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buenos Aires before the libellants signed the articles, were by him noted on the articles, and, in the presence of the lieblants, directed to be paid on account of the wages of the respective libellants. It was further stipulated that in directing the master of the *Rhine* to honor such advance notes, the Consul was acting in accordance with Section 237 of the Consular Regulations of the United States. When the bark arrived at New York the libellants were paid the wages earned, less the \$25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of Section 10 (a) of the Act of March 4, 1915, entitled 'An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States,' which declares such advances to be unlawful and of no effect."

It is undisputed that the advances were paid. If the advances be recognized the libellants have no claim. The stipulation as to the testimony of the master of the *Rhine* (which is uncontradicted) shows (Record, p. 6):

"that it would have been impossible to secure a crew for said ship at Buenos Aires except by agreeing to pay one month's wages in advance."

The stipulation shows (p. 7) that section 237 of the Consular Regulations provides:

"The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction of the act referred to in the next preceding paragraph [statute against advances]."

As to securing employment and signing the advance notes, the testimony of Johanson on cross-examination in the Neilson case [No. 393] was that he met a runner for Willy Moore and

(pp. 11-12) :

"Q. He just asked you if you wanted a job? A. Yes.

Q. And what did you say? A. I said 'if I can get a job, I want to get away from this place.'

Q. And what did he say? A. 'You can get a job if you come to me' and I said 'I will come.'

Q. Then what did he say? A. 'Come to me to-morrow morning at ten o'clock.'

Q. How many days was that before you went on the Rhine? A. One day before.

Q. And you went there. And what did he say then? A. We went to the consul.

Q. Where did you sign this advance note? A. In his home.

Q. What did he say to you when he asked you to sign it? A. If you want to sign for \$25.00 a month wages and \$25.00 advance.

Q. And did you sign a ticket? A. Yes.

Q. Would you recognize your signature if you saw it? Would you remember where you signed it if you could see the signature? A. No.

Q. Just come here. Is that your signature?

(Witness identifies his signature on ticket dated Buenos Aires, 7/10/16.)

(Claimant's Exhibit A for identification.)

Q. And then you went to the consul's after that? A. Yes.

Q. And you signed on the articles before the consul? A. Yes.

Q. Can you read? A. Not very proper.

Q. You can read though? A. Yes.

Q. Can you write? A. Yes.

Q. Just come here again. Are these the articles you signed before the consul? A. Yes.

Q. Will you point out your name? A. (Witness indi-

cates name 'August Johanson' on page 4 of articles, opposite No. 39).

Q. You signed your name on there before the consul?
A. Yes.

Q. And all the rest of them did the same? A. Yes.

Q. Now, what did the consul tell you? A. He showed us that ticket that we write at Willy Moore's house and ask us if we sign it.

Q. Did he ask each one of you that? A. Yes.

Q. And what did you say? A. 'Yes'.

Q. And did the others all say 'Yes'? A. Yes.

Q. And then what did the consul say? A. That we have to write the name on this paper.

Q. Did he put the figures down here on the articles after he said to sign the advance note? A. No.

Q. When did you see the consul write this? A. Before he [we] wrote our name.

Q. And did everybody else do it the same way? A. Yes."

THE STATUTE

ACT OF JUNE 26, 1884, c. 121, SEC. 10, 23 Stat. L. 55-56.

ACT OF MARCH 4, 1915, c. 153, SEC. 11, 38 Stat. L. 1168-69.

"SEC. 11. That section twenty-four of the act entitled 'An act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce', approved December twenty-first, eighteen hundred ninety-eight, be, and is hereby, amended to read as follows:

"SEC. 24. That section ten of chapter one hundred twenty-one of the laws of eighteen hundred eighty-four, as amended by section three of chapter four hun-

dred twenty-one of the laws of eighteen hundred eighty-six be, and is hereby, amended to read as follows:

"SEC. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages *before leaving the port at which such seaman may be engaged* in advance of the time when he has actually earned the same, or to pay such advance wages to any

other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.

Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than *four times the amount of the wages so advanced or remuneration so paid* and may be also imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages or remuneration shall in no case, except as

"SEC. 10. (a): That it shall be, and is hereby, made unlawful in any case to pay any seaman wages

in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.

Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25 nor more than \$100

and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as

herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages: Provided, That this section shall not apply to whaling vessels: And provided further,

herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than \$500.

That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation.

(b) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister or children.

(c) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be

the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

(d) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine of not exceeding \$500 or imprisonment not exceeding six months, at the discretion of the court.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels as to vessels of the United States;

(e) *That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master,*

owner or agent of a vessel of the United States would be for similar violation.

and any foreign vessel the master, owner, consignee or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(f) That under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

We have indicated by italics the only important respects in which there is any difference between the 1884 section and the 1915 section.

ARGUMENT

For the respondents we shall argue:

1. Under the Act of 1884 advances to seamen on shipment on an American vessel in a foreign country were not unlawful.
2. The amendment of 1915 did not change the law with respect to advances in foreign ports, and some of the changes made indicate more clearly than did the Act

of 1884 that it was not intended to prohibit advances in foreign ports.

3. The 1884 section as amended and re-enacted in 1915 carried with it into the 1915 section the interpretation which had been given it by the courts and the executive department of the Government.

4. Advances to seamen in foreign countries are not against the public policy of the United States, and cannot be nullified on that ground.

FIRST POINT

UNDER THE ACT OF 1884 ADVANCES TO SEAMEN ON SHIPMENT ON AN AMERICAN VESSEL IN A FOREIGN COUNTRY WERE NOT UNLAWFUL.

In 1884, the exact point here involved was decided in the vessel's favor by Judge Addison Brown in *The State of Maine*, 22 Fed. Rep. 734. There the master of the American ship *State of Maine*, then at Antwerp, endeavored to procure a crew without making advances of wages or paying sailors' bills, but was unable to do so except by providing for the payment of certain board bills. The seamen were shipped under the supervision of the American Consul at Antwerp, and the bills were paid by the master through the Consul. The correctness of the bills was certified by the signatures of the seamen. In rendering his account to the Shipping Commissioner after arrival at New York the master charged against

the crew the bills he had paid in their behalf at Antwerp. Four of the seamen denied their signatures, denied that the bills were owed by them, and libelled the vessel for full wages under section 10 of the Act of June 26, 1884. Judge Brown held that these bills, paid with the procurement and assent of the seamen, were valid offsets to their wages, and that the Act of 1884, although prohibiting such advances in United States ports, nevertheless did not render unlawful the advances made at Antwerp.

The facts in the case at bar cannot be distinguished from those in *The State of Maine*.

We adopt Judge Brown's own statement as the strongest argument against applying the statute to advances in foreign ports, and here quote the principal parts of his opinion. As to section 10 of the Act of 1884, Judge Brown said (22 Fed. Rep. at pp. 735-737) :

"The language of this section is doubtless broad enough to embrace the shipment of seamen in foreign ports, as well as in ports of the United States; but statutes must be interpreted and applied according to their intention. The act, it will be perceived, is penal, as well as remedial. Whatever the act prohibits may, if committed, be punished by six months' imprisonment. There seem to me to be controlling reasons why the shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of this act.

1. Statutes have no extra territorial force. The shipment of seamen in a foreign port, and the payment either of advance wages or of bills previously incurred, as in this case, as an advance of wages, are acts done and completed wholly upon foreign soil; and therefore wholly beyond the jurisdiction of this country. If American vessels be treated as a part of the territory of the United States, and within its jurisdiction, though in foreign ports, still, acts like the present, that are not done upon shipboard, but, as I have said, are completed upon land

prior to the seamen's coming abroad, and as a means of procuring them to do so, would not be done within the territorial jurisdiction of this country. Every presumption is against the supposition that congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction. And while congress might, perhaps, subject the masters of American vessels, upon their return to this country, to punishment for acts done upon foreign soil, though such acts were lawful there, still, such an intention would not be presumed. Nor is such an intention sufficiently indicated by mere general language, that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States. The intention to include acts done on foreign territory would only be inferred from some specific provisions, showing an indisputable intention to make the statute applicable to acts committed beyond our territorial jurisdiction. The provisions of this statute are not of that specific character.

2. The general purpose of this act is indicated by its title. Its various provisions, as well as the well-known circumstances which led to its passage, show that it was passed in order to correct certain practices and to reform certain abuses to which seamen were subject in the ports of this country. It is scarcely credible that in passing this act congress intended to undertake to correct similar evils in all parts of the world, if they everywhere exist. It had in view the reforms which were deemed necessary in our own ports, over which it had control; and there, presumably, its intention ends.

3. Having no power to carry out any such reforms in foreign territory, it is, again, scarcely credible that congress intended by this section to place American ships at a great disadvantage as compared with other ships in foreign ports, by preventing their obtaining seamen upon the same terms available to foreign vessels. This section, if applied to our vessels in foreign ports, would be wholly futile as regards the correction of any similar abuses there; and it would have no other practical effect than to cripple and disable our own shipping in foreign ports.

This is a result clearly foreign to the purposes of this act. 'All laws', say the supreme court in *U. S. v. Kirby*, 7 Wall. 486, 'should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' *Carlisle v. U. S.*, 16 Wall. 153.

4. The final clause of section 10, which declares that 'this section shall apply as well to foreign vessels as to vessels of the United States', and that in case of violation a clearance shall be refused them, furnishes a specific indication that congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in this country alone. For it is manifest that, as against foreign vessels in foreign ports, not only would this whole section be mere *brutum fulmen*, but the specific provision just referred to would be wholly inapplicable. Its only possible legal application to foreign vessels would be as regards their acts while within the ports of this country. And as the intent of this section is clear to make no discrimination between foreign vessels and domestic vessels, and as the section as to foreign vessels cannot possibly be applied as regards their acts done in foreign ports, it follows that the whole section must be deemed intended to apply to the ports of this country only."

Patterson v. Bark Eudora, 190 U. S. 169, strongly reinforces Judge Brown's conclusions. His decision was cited in the briefs submitted to this Court. There the statute against advances was held to apply to a British vessel which had shipped seamen at Portland, Maine, for a voyage to Rio and return to the United States or Canada, and had paid \$20, with the consent and at the instance of each of them, to the shipping agent through

whom they were employed. Mr. Justice Brewer there said (p. 176) :

"It may be remarked in passing that it does not appear that the contract of shipment or the advance payments were made on board the vessel. On the contrary, the stipulated fact is that the 'seamen were engaged in the presence of the British Vice Consul at the port of New York.' The wrongful acts were, therefore, done on the territory and within the jurisdiction of the United States."

Mr. Justice Brewer said further (pp. 178-9) :

"Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file:

'Moreover, as ninety per cent. of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid, and if in a large port like New York ninety per cent. of the vessels are permitted to prepay such seaman as ship upon them, and the other ten per cent., being American vessels, cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably, appealed to Congress and fully justified the provision herein contained.'

The considerations last stated by Mr. Justice Brewer show strongly that the reason why the statute should apply to a foreign vessel in our ports is the very reason why it should not apply to an American (or other) vessel in a foreign port. If in a foreign port, as at Buenos Aires, an American vessel, in competition with foreign vessels, cannot secure a crew except by paying advances,

then a prohibition against advances results in those obstructions and disabilities to our shipping which it is the very purpose of our statutes to prevent. All reason is against any interpretation of the statute which would bring about such a result.

SECOND POINT

THE AMENDMENT OF 1915 DID NOT CHANGE THE LAW WITH RESPECT TO ADVANCES IN FOREIGN PORTS, AND SOME OF THE CHANGES MADE INDICATE MORE CLEARLY THAN DID THE ACT OF 1884 THAT IT WAS NOT INTENDED TO PROHIBIT ADVANCES IN FOREIGN PORTS.

The 1884 section and the 1915 section are printed in parallel columns on pages 4-8, *supra*. A glance at the italics there appearing will show all the differences worth mentioning. The history of this section as to advances is given in Vol. 7 U. S. Comp. Stat., 1916, Sec. 8323.

The only language in the 1915 section which bears directly on locality of application is subdivision (*e*), which provides:

"That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States."

The 1884 section provided:

"This section shall apply as well to foreign vessels as to vessels of the United States."

The dissenting opinion of Judge Learned Hand in the Circuit Court of Appeals was based solely on these seven words. He said (Record, p. 23) :

"Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in *Patterson v. Bark Eudora*, 190 U. S. 169, held that foreign vessels were bound and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause, 'while in waters of the United States,' in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase, 'foreign vessels.' If the statute had read 'as well to foreign vessels as to vessels of the United States, while in the waters of the United States,' there could have been no doubt, but the limitation by its position directly affecting one class seems to me to give the other its general meaning, unless there was good contrary reason in the context."

THE PROVISION CONCERNING FOREIGN VESSELS "WHILE IN WATERS OF THE UNITED STATES" DID NOT PRESCRIBE A RULE FOR AMERICAN VESSELS IN FOREIGN COUNTRIES.

The insertion in the 1915 section of the words "while in waters of the United States" clearly got its impetus from *Patterson v. Bark Eudora, supra*, which held that a British vessel while in waters of the United States was subject to the prohibition against advances. The purpose of this insertion was to make it plain to foreign ship owners, particularly in view of the abrogation of treaties provided for by the Act of 1915, that while their vessels were in our ports, our statute against advances would be applied to them. See *The Ixion*, 237 Fed. Rep. 142; *The London*, 238 Fed. Rep. 645, aff'd, 241 Fed. Rep. 863. This did not reflect an intention that as to American

vessels the prohibition against advances should apply in foreign countries.

The only purpose of naming American vessels in this subdivision was to denote the law to which foreign vessels should be subject, as otherwise it was unnecessary to mention American vessels at all. The fact that the application of the statute to foreign vessels is limited by the time they are in waters of the United States does not suggest that American vessels are under prohibitions both in waters of the United States and in all other waters and places.

The provision for application of the section to foreign vessels "while in waters of the United States" did not expand the section to apply to transactions relating to American vessels done on land in foreign countries. The provision deals only with foreign vessels, and it is reasonable to limit it to such vessels. Enough justification for its insertion in the 1915 section may be found in *Patterson v. Bark Eudora, supra*, where this Court, answering the contention that because a foreign ship was involved the prohibition did not apply, took the point that the advances were made on land. Congress may well be supposed to have wished it made clear that the section applied to a foreign ship in our waters, irrespective of whether the advances were made on land or on shipboard. After this Court had held the section applicable to foreign vessels while in our ports and, inferentially, then only, it was quite natural that, with no other purpose than conforming the statute to the decision, Congress should carry into the amended section the limitation thus suggested.

It is a thankless task to torture inapt expressions into declarations of intention, and thus seek to construct an inclusive and intelligent statute. If it be assumed that Congress could have intended by this provision to make the prohibition apply to advances in foreign countries, we find it hard to imagine any more indirect or ambiguous method of effecting this result. The Congressional Debates and Reports do not disclose that Congress was acquainted with or had in mind advances made in foreign countries. Nor, so far as we have been able to find, do they make any reference to Judge Brown's decision in *The State of Maine, supra*, or to the conditions which gave rise to that case and this. It was common knowledge, however, that foreign seaman's laws differed from our own and in many instances permitted advances, and undoubtedly for that reason it was deemed prudent (and only courteous to foreign nations in view of the proposed abrogation of treaties with respect to seamen on foreign ships) to insert in the section a specific declaration of the time, i. e., while they should be in United States waters, that foreign ships would be subject to this section.

The very fact that our law applies to foreign vessels while in our ports is one of the strongest arguments why it should be held not to apply to our vessels while in foreign ports. In other words, we should recognize the law of foreign countries with respect to our vessels in their ports, just as we expect foreign countries to recognize our law with respect to their vessels in our ports. This but accords with the general doctrine that when a merchant vessel of one country enters a port of another for the purposes of trade it subjects itself to the law of the place to which it goes. *Wildenhus's Case*, 120 U. S.

1, 11. It can make no difference that the master was not compelled by Argentine law to make the advances. It was necessary for him to make the advances before he could get a crew, and there is nothing to suggest that the advances were unlawful at Buenos Aires. Payment of the advances was by the law there prevailing a valid payment on account of wages, and the rights between the ship and the seamen created by that payment should not be destroyed because a similar payment, if made here, would have been invalid. Ordinarily the validity and effect of a payment are determined by the law of the place where the payment is made, as is likewise the validity of a contract. The contracts between the ship and the seamen as well as the advances were made on shore at Buenos Aires. "The general and almost universal rule is that the character of the acts as lawful or unlawful must be determined wholly by the law of the country where the act is done", said Mr. Justice Holmes in *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356.

For what reason shall the well established rules of law be set aside in this case? It is said that performance of the seamen's contracts was to be on an American vessel. But that is wholly immaterial. Questions concerning performance are governed by the law of the place of performance, but questions concerning the making and validity of the contract are governed by the law of the place where the contract is made. *Scudder v. Union Natl. Bank*, 91 U. S. 406.

THE "FLOATING ISLAND" THEORY IS INAPPLICABLE.

The theory that the ship was a "floating island" and thus a part of American territory subject to American law, has a very limited application, and so to speak of her is only to employ a metaphor, as was said in *Queen v. Keyn*, L. R. 2 Ex. Div. 63, 93-94. Although appropriate to a vessel on the high seas, because there is no other law which can be supposed to be in effect, the "floating island" theory cannot properly apply when the vessel is in the territorial waters of a foreign country, and there can be no justification for applying this theory to transactions on land in a foreign country even though they concern the vessel.

Performance of service on the vessel is the seaman's part of the contract, payment of wages is the owner's part. It would be a curious *non-sequitur* to hold that the fact that the seaman's service was on an American vessel varied the effect of the payment made in a foreign country.

This is not to say that some of our laws are not in force on American ships wherever they sail.

The presumption is that Congress did not intend to impose on American vessels in foreign ports restrictions which would prevent competition on equal terms with foreign vessels there.

THE PENAL PROVISIONS OF THE SECTION SHOW THAT IT WAS NOT INTENDED TO APPLY TO AMERICAN VESSELS IN FOREIGN COUNTRIES.

The conclusion that the prohibition does not apply to advances in foreign countries is made certain by other provisions. Thus, for violating any of the provisions of

the section any person is guilty of a misdemeanor, and punishable by fine and imprisonment for six months equally by the 1884 section and the 1915 section. Further, by the 1915 section any person who demands or receives from the seaman remuneration for providing him with employment is guilty of a misdemeanor and may be imprisoned for six months or fined \$500. The master, owner, etc., of a foreign vessel violating the section is liable to the same penalty as the master, owner, etc., of a vessel of the United States for a similar violation. Sub-division (e) of the 1915 section has the following significant provision:

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Provisions as to penalties and refusal of clearance are intelligible only in relation to United States ports, to which, indeed, the provision last quoted specifically limits itself. Nobody suggests that the customs or other clearance authorities of foreign countries are charged with the enforcement of our shipping laws. All the provisions regarding breach of the statute are susceptible of enforcement only in the United States. Since the penalties are made applicable equally to both American and foreign vessels, and since the statute must be interpreted consistently with itself, the prohibition against advances cannot properly be held to apply to advances in a foreign country.

THE TITLE OF THE ACT OF 1915 INDICATES NO DIFFERENT PURPOSE FROM THAT OF THE ACT OF 1884, AND THE PROVISION WITH RESPECT TO ADVANCE PAYMENTS NOT BEING A DEFENSE IS UNCHANGED.

The fact that the title of the 1915 statute suggests that it was passed for the benefit of seamen is not material. The statute of December 21, 1898, which it amended (which statute was itself an amendment of the Act of 1884 and the Act of 1886) was itself an act "to amend the laws relating to American seamen, for the protection of such seamen", etc. From 1884 to 1915 the section showed on its face that it was for the benefit of seamen and the title of the Act of 1915, therefore, adds nothing, even if the title of the Act could affect the clear meaning of the words, which it can not. Let it be conceded that the statute is remedial, the remedy cannot be applied more broadly than the prohibition.

The provision that

"The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel, suit or action for recovery of such wages"

is emphasized by the petitioners to support their contention that advances may be recovered in our courts, irrespective of where they were made. Irvin, D. J., accepted this argument in the *Talus* case [No. 392].

The last quoted provision was not amended by the Act of 1915, but is the same as it was when *The State of Maine* was decided.

Moreover, the provision is incorporated into the penal part of the statute and cannot be segregated from it and

applied to a situation where the penal part would be without force. If the statute as a whole does not apply, a single clause does not. The language of Grubb, *D. J.*, speaking for the Circuit Court of Appeals for the Fifth Circuit in the *Talus* case [No. 392] is apposite.

"We think the reasonable construction of the section is that it covers only such advances as it was within the competency of Congress to criminally punish the making of, viz: advances made within the territorial waters and jurisdiction of this country by whomever made and to whomever paid. This gives the section a legitimate field of operation. * * * Congress might have treated it, by imposing as a condition upon the entry to and clearance from American ports of both foreign and domestic vessels, that all advances, which were made to seamen in a foreign port before the voyage began, should be agreed by the ship to be disregarded in settlements required by the law to be made with seamen in the ports of this country. Instead of doing so, it went further and provided that every advance, prohibited by the act including those made by the agents, owners or masters of foreign ships, should be punishable as a misdemeanor. Its determination to make the criminal penalty cover all advances prohibited by the section indicates that its intention was to limit the scope of the prohibited advances to its undoubted competency in that respect; *i. e.*, to such as were made within its undoubted jurisdiction to punish crimes. It also prevents a construction that would separate the penalty provisions from any class of the prohibited advances, and so sustain the law in other respects as to the class of advances to which the penalties are legally inapplicable, since the penalty provision is as wide as the prohibition itself and covers every advance, whether made by a domestic or foreign ship which is prohibited by the terms of the act."

THIRD POINT

THE 1884 SECTION WHEN AMENDED AND RE-ENACTED IN 1915 CARRIED WITH IT INTO THE 1915 SECTION THE INTERPRETATION WHICH HAD BEEN GIVEN IT BY THE COURTS AND THE EXECUTIVE DEPARTMENT OF THE GOVERNMENT.

No proposition of law is better settled than this.

Congress must be taken to have known Judge Brown's decision in *The State of Maine, supra*, and also Section 237 of the Consular regulations, both to the effect that the prohibition against advances did not apply to an American vessel in a foreign port. In the face of this knowledge Congress amended and re-enacted the 1884 section without change in any respect affecting the previous decisions and practice as to its application. Thus Congress, not dissenting, but acquiescing, in reality adopted and proclaimed Judge Brown's construction and the executive practice as showing the intent of the statute, which is now to be read as if that intent were expressly stated in it. We submit, therefore, that the courts are not now free to give the statute a different interpretation, irrespective of what might now be decided if the question were *res nova*.

Lewis's Sutherland on Statutory Construction, 2nd ed., Vol. 2, Sec. 403, says:

"*Re-enacted Statutes and Parts of Statutes.* In the interpretation of re-enacted statutes the court will follow the construction which they received when previously in force. The legislature will be presumed to know the effect which such statutes originally had, and by re-enactment to intend that they should again have the same effect. The same rule applies to the readoption of a constitutional provision. It is not necessary that a statute

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should be re-enacted in identical words in order that the rule may apply. It is sufficient if it is re-enacted in substantially the same words. The same principle applies when a statutory provision is taken from a constitutional provision which has been construed. The rule has been held to apply to the re-enactment of a statute which has received a practical construction on the part of those who are called upon to execute it." * * *

In *Sessions v. Romadka*, 145 U. S. 29, 42, Mr. Justice Brown said:

"Congress, having in the Revised Statutes adopted the language used in the Act of 1837, must be considered to have adopted also the construction given by this Court to this sentence and made it a part of the enactment."

In *Logan v. United States*, 144 U. S. 262, 302, it was said:

"The combination and transposition of the provisions of 1862, 1864 and 1865, in a single section of the Revised Statutes, putting the two provisos of the later statute first, and the general rule of the earlier statute last, but hardly changing the words of either, except so far as necessary to connect them together, cannot be held to have altered the scope and purpose of these enactments, or of any of them. It is not to be inferred that Congress, in revising and consolidating the statutes, intended to change their effect, unless an intention to do so is clearly expressed."

See also

Fisk v. Henarie, 142 U. S. 459; *United States v. Ryder*, 110 U. S. 729, 739-40; *McDonald v. Hovey*, 110 U. S. 619; *Black, Interpretation Laws*, 1896 Ed., p. 369; *Sedgwick, Statutory & Constitutional Law*, 2nd ed., pp. 365-366; *St. George v. Rockland*, 89 Maine, 43; *United States v. Trans-Missouri Freight Ass'n*, 58 Fed. Rep. 58; *United States v. Albright*, 234 Fed. Rep. 202; *In re Guggenheim Smelting Co.*, 121 Fed. Rep. 153.

FOURTH POINT

ADVANCES MADE TO SEAMEN IN FOREIGN COUNTRIES ARE NOT AGAINST THE PUBLIC POLICY OF THE UNITED STATES, AND CANNOT BE NULLIFIED ON THAT GROUND.

Whether the question be considered from the point of view of an assignment of wages or the hiring of seamen, in either case we deal with a transaction fully executed and valid at the place of performance. The respondents are not seeking affirmative relief. Therefore the rule of public policy has no application to these cases. See *International Harvester Co. v. McAdam*, 142 Wis. 114, and authorities there cited. Marshall, J., said (p. 120) :

"The last rule that need be stated is this: A contract under the foregoing is not, necessarily, contrary to the public policy of a state, merely because it could not validly have been made there, nor is it one to which comity will not be extended, merely because the making of such contracts in the place of the forum is prohibited, general statements to the contrary notwithstanding. In *Miliken v. Pratt*, 125 Mass. 374, 28 Am. Rep. 241, the court remarked substantially, even a contract expressly prohibited by the statutes of the state in which the suit is brought, if not in itself immoral (the term 'immoral' being used in the broadest sense), is not, necessarily, nor usually, deemed so invalid that the comity of the state, as administered by its court, will refuse to entertain an action under all circumstances to enforce it. There must be something inherently bad about it, something shocking to one's sense of what is right as measured by moral standards, in the judgment of the courts, something pernicious and injurious to the public welfare. In *Greenhood on Public Policy* at page 46, cited by counsel, the following rule is deduced from the authorities cited:

'When a contract is valid under the public policy of the state where made, it will be enforced in another

state, although the same would by the statute laws of the latter state be void, unless its enforcement would exhibit to the citizens of the state an example pernicious and detestable.'

"It will occur to one, on a moment's reflection, that the last foregoing rule could not be otherwise, else the doctrine that a contract valid at the place where made is valid and, generally speaking, enforceable everywhere, would be wholly nullified as to foreign contracts which would not be valid if made in the place enforcement is sought."

On this point, Hough, *C. J.*, said in the court below (Record, p. 23) :

"Therefore the contention becomes this, that this executed contract must be set aside, because the statute in effect declares it repugnant to the 'policy and morality' of the people of the United States. We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to ordinarily affects only executory contracts."

LAST POINT

IT IS RESPECTFULLY SUBMITTED THAT THE DECISION OF THE CIRCUIT COURT OF APPEALS SHOULD BE AFFIRMED, WITH COSTS.

BURLINGHAM, MONTGOMERY & BEECHER
Proctors for Respondents

ROSCOE H. HUPPER
Of Counsel

October, 1918

Argument for Petitioners.

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The cases are stated in the opinion.

Mr. Silas B. Axtell, with whom *Mr. Vernon S. Jones* was on the brief, for petitioners:

A contract cannot be given legal effect in a court of the United States which is contrary to the declared public policy of the United States; and this rule is not affected by the fact that the objectionable parts of the contracts have been executed and that those remaining are innocuous. *Hope v. Hope*, 8 DeG. M. & G. 731; *The Kensington*, 183 U. S. 263.

The policy of a State is evidenced by its constitution and laws. It is also obvious that no State will give effect to the laws of another on the principles of comity when the effect would be injurious to the State or its citizens. *Woodward v. Roane*, 23 Arkansas, 523; *Marshall v. Sherman*, 148 N. Y. 9; *Hill v. Spear*, 50 N. H. 253, 262.

This practice of "crimping" is vile and pernicious, destructive of a free and clean class of seamen. It involves greater moral turpitude than gambling. See *Patterson v. Bark Eudora*, 190 U. S. 169.

The contract was one looking to a performance partly on board an American vessel while on the high seas and partly within the territorial jurisdiction of the United States; the law of the place of performance governs.

Congress intended the act to apply to all advances made in foreign ports where the satisfaction of the advance note might be made in the United States. The penal provisions of a statute do not necessarily make it penal in its whole intent or for all purposes. *Hyde v. Cogan*, 2 Doug. 699; *Short v. Hubbard*, 2 Bing. 349. Also a statute which is made for the good of the public, though it is penal, ought to receive an equitable and liberal construction. *Tyner v. United States*, 23 App. D. C. 324.

In affording relief in a civil suit under a statute, both remedial and penal, the court will not be bound by any

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narrow technical or forced interpretation by which it might have been bound were the statute alone penal. *Northern Securities Co. v. United States*, 193 U. S. 197; *United States v. Twenty-five Packages of Panama Hats*, 231 U. S. 358.

A statute should also be read with reference to its leading idea, and its predominant purpose will prevail over the literal import of particular terms.

Even a cursory review of the various sections of this act reveals in Congress a zealous regard for the uplift, protection and emancipation of American seamen. The legislation against "crimping" is but one of the many reforms, sought by this and earlier laws which throw light on the meaning of this one.

If the act be regarded as strictly penal, Congress, under the commerce clause, has ample authority to punish for extra-territorial offenses. *United States v. Craig*, 28 Fed. Rep. 795, 801; *United States v. Gordon*, 5 Blatchf. 18. See *The Belgenland*, 114 U. S. 355; *The Brantford City*, 29 Fed. Rep. 373.

A comparison of the Dingley Act, of which the section in question was an amendment, reveals that the words now found in subsection (e) of the present act, "while in waters of the United States," were not in the original Dingley Act. It is a fair inference that Congress intended the new act to apply universally to American vessels. See dissenting opinion in court below, 250 Fed. Rep. 184.

Mr. Roscoe H. Hupper for respondents:

Under the Act of 1884 advances to seamen on shipment on an American vessel in a foreign country were not unlawful. *The State of Maine*, 22 Fed. Rep. 734; *Patterson v. Bark Eudora*, 190 U. S. 169.

The amendment of 1915 did not change the law with respect to advances in foreign ports, and some of the

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changes made indicate more clearly than did the Act of 1884 that it was not intended to prohibit advances in foreign ports. The only language in the 1915 section which bears directly on locality of application is subdivision (e). The 1884 section provided: "This section shall apply as well to foreign vessels as to vessels of the United States."

The insertion in the 1915 section of the words "while in waters of the United States" clearly got its impetus from *Patterson v. Bark Eudora, supra*, which held that a British vessel while in waters of the United States was subject to the prohibition against advances. The purpose of this insertion was to make it plain to foreign ship-owners, particularly in view of the abrogation of treaties provided for by the Act of 1915, that while their vessels were in our ports, our statute against advances would be applied to them. See *The Ixion*, 237 Fed. Rep. 142; *The London*, 238 Fed. Rep. 645; affd. 241 Fed. Rep. 863. This did not reflect an intention that as to American vessels the prohibition against advances should apply in foreign countries.

If it be assumed that Congress could have intended by this provision to make the prohibition apply to advances in foreign countries, we find it hard to imagine any more indirect or ambiguous method of effecting this result. The congressional debates and reports do not disclose that Congress was acquainted with or had in mind advances made in foreign countries. Nor, so far as we have been able to find, do they make any reference to Judge Brown's decision in *The State of Maine, supra*, or to the conditions which gave rise to that case and this. It was common knowledge, however, that foreign seaman's laws differed from our own and in many instances permitted advances, and undoubtedly for that reason it was deemed prudent (and only courteous to foreign nations in view of the proposed abrogation of treaties with respect to

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seamen on foreign ships) to insert in the section a specific declaration of the time, *i. e.*, while they should be in United States waters, that foreign ships would be subject to this section.

The very fact that our law applies to foreign vessels while in our ports is one of the strongest arguments why it should be held not to apply to our vessels while in foreign ports. In other words, we should recognize the law of foreign countries with respect to our vessels in their ports, just as we expect foreign countries to recognize our law with respect to their vessels in our ports. This but accords with the general doctrine that when a merchant vessel of one country enters a port of another for the purposes of trade it subjects itself to the law of the place to which it goes. *Wildenhus's Case*, 120 U. S. 1, 11. The contracts between the ship and the seamen as well as the advances were made on shore at Buenos Ayres. "The general and almost universal rule is that the character of the acts as lawful or unlawful must be determined wholly by the law of the country where the act is done." *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356.

Questions concerning performance are governed by the law of the place of performance, but questions concerning the making and validity of the contract are governed by the law of the place where the contract is made. *Scudder v. Union National Bank*, 91 U. S. 406.

The penal provisions of the section show that it was not intended to apply to American vessels in foreign countries.

The title of the Act of 1915 indicates no different purpose from that of the Act of 1884, and the provision with respect to advance payments not being a defense is unchanged.

The 1884 section when amended and reenacted in 1915 carried with it into the 1915 section the interpretation

Argument of United States as *amicus curiae*. 248 U. S.

which had been given it by the courts and the executive department of the government.

Advances made to seamen in foreign countries are not against the public policy of the United States, and cannot be nullified on that ground.

Mr. Assistant Attorney General Brown, with whom *Mr. Robert Szold* was on the brief, for the United States as *amicus curiae*:

Section 11 requires that in a libel for wages against an American vessel advances paid by the American master abroad shall not be treated as valid. It is submitted that the rule of prior executive and judicial construction is not applicable for various reasons.

The rule is not arbitrary. It affords a presumption operative in absence of countervailing evidence, but is of no avail where the true legislative intent otherwise is manifest. "It is not allowable to interpret what has no need of interpretation." *United States v. Graham*, 110 U. S. 219, 221.

In the present case the environment in which the act was passed and the legislative history demonstrate the intent to cover all foreign-made advances by vessels, foreign and domestic, coming into our ports. The prime purpose to aid the merchant marine is otherwise defeated.

The Act of 1915, moreover, amended the statute which had previously been construed, by words designed to do away with any previous misconception.

It added the words "while in waters of the United States" to qualify the words "foreign vessels." Thus, the validity of the advance by foreigners abroad was not sought to be affected, but only its recognition and enforcement in libels for wages in our courts against foreign boats which come into our waters. By omitting the qualifying words with reference to "vessels of the United States," the actual validity of the advance made abroad

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Opinion of the Court.

by American masters was, however, touched. The decision in *The State of Maine*, 22 Fed. Rep. 734, disregards the settled principle that the law governing the shipment of seamen abroad is the law of the flag, and it disregards also the requirements of Rev. Stats., § 4517. And a custom of an executive department, however long continued, must yield to the positive language of a statute. *Houghton v. Payne*, 194 U. S. 88, 100.

Congress may impose in its discretion conditions upon the entry into American ports of American vessels as well as of foreign vessels. The citizen has no more vested right to engage in foreign trade without regard to legislative conditions, than the foreigner. *Buttfield v. Stranahan*, 192 U. S. 470; *Weber v. Freed*, 239 U. S. 325. The courts, moreover, may apply the national law to determine the validity of contracts made abroad between seaman and master on national vessels. *The Belgenland*, 114 U. S. 355, 364; Hall, International Law, 6th ed., p. 199; *United States v. Rodgers*, 150 U. S. 249.

The statutes of the United States have regulated the payment of wages by American vessels to American seamen in foreign ports from the beginning.

MR. JUSTICE DAY delivered the opinion of the court.

These cases were considered together in the courts below and may be disposed of in like manner here.

The facts are:

In the first case Paul Neilson and nine other seamen sue for the recovery of wages claimed to be due them from the bark "Rhine." It appears that they shipped on the American bark "Rhine" at Buenos Ayres, October 7, 1916, for a voyage to New York, at the rate of \$25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Ayres is controlled by certain shipping masters, to one of whom the libelants, in ac-

NEILSON ET AL. v. RHINE SHIPPING COMPANY,
CLAIMANT OF THE SAILING SHIP "RHINE."

HARDY ET AL. v. SHEPARD & MORSE LUMBER
COMPANY, CLAIMANT OF THE BARKENTINE
"WINDRUSH."

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

Nos. 393, 394. Argued November 5, 1918.—Decided December 23, 1918.

Section 11 of the Seaman's Act of 1915, c. 153, 38 Stat. 1164, construed as not prohibiting advance payment of wages when made by an American vessel to secure seamen in a foreign port. P. 212.
Sandberg v. McDonald, ante, 185.
250 Fed. Rep. 180, affirmed.

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cordance with the usual custom and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buenos Ayres before the libelants signed the articles, were by him noted on the articles and, in the presence of the libelants, directed to be paid on account of the wages of the respective libelants. It was further stipulated that in directing the master of the "Rhine" to honor such advance notes, the Consul was acting in accordance with § 237 of the Consular Regulations of the United States. When the bark arrived at New York the libelants were paid the wages earned, less the \$25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of § 11 of the Act of March 4, 1915, entitled "An Act To promote the welfare of American seamen in the merchant marine of the United States," upon the theory that such advances are unlawful and of no effect.

The facts in relation to the case of the Barkentine "Windrush" differ from the above only in respect of the fact that the advance notes are not in evidence, but are noted on the articles.

The District Court decided in favor of the libelants. 244 Fed. Rep. 833. The Circuit Court of Appeals reversed the decrees. 250 Fed. Rep. 180. The cases are here on writs of certiorari.

The section of the statute is the same as that involved in the case of *The Talus* [*Sandberg v. McDonald*], No. 392, *ante*, 185. The difference is that the advances were made by the master of an American vessel in a South American port, whereas in *The Talus* the advancements were made to foreign seamen in a British port. The same general considerations as to the interpretation of the statute which controlled in the decision of the case of *The Talus* are applicable here and need not be repeated.

That American vessels might be controlled by con-

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gressional legislation as to contracts made in foreign ports may, for present purposes at least, be conceded. It appears that only by compliance with the local custom of obtaining seamen through agents can American vessels obtain seamen in South American ports. This is greatly to be deplored, and the custom is one which works much hardship to a worthy class. But we are unable to discover that in passing this statute Congress intended to place American shipping at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage.

The statute itself denies clearance papers to vessels violating its terms. This provision could only apply to domestic ports and is another evidence of the intent of Congress to legislate as to advances made in our own ports.

Affirmed.

MR. JUSTICE MCKENNA, with whom concur MR. JUSTICE HOLMES, MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE, dissenting.

These cases were submitted with Nos. 361 [*Dillon v. Strathearn S. S. Co.*, *ante*, 182,] and 392, [*Sandberg v. McDonald*, *ante*, 185,] and, like them, are proceedings in admiralty under the Seamen's Act of 1915, 38 Stat. 1164-1168.

The facts are set out in the opinion of the court. In these cases, as in others, we are constrained to dissent. The principle of decision should be, we think, that declared in our dissent in *The Talus*, *ante*, 185. The facts of these cases put more tension upon it, that is, an adhesion to the words of the statute as determinative of its purpose rather than some of its consequences. We have here the somewhat appealing force of a picture

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of an American ship only able to escape practical internment in a foreign port by a violation of the law, if it be as we have declared it. And this under the sanction of the United States Consul acting under the following regulation of the Department of State:

"237. Advances to Seamen Shipped in Foreign Ports.—The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of the Act referred to in the next preceding paragraph [inserted in the margin].¹ The final clause of the Act, which declares that this section shall apply as well to foreign vessels as to those of the United States, and that in case of violation a clearance shall be refused them, is a clear indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in the United States alone. The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports. In the settlement of wages due seamen in such cases, therefore, consular officers will take into account what has been paid in advance. 22 Fed. Rep. 734."

¹ "236. No Advance Wages.—Except in case of whaling vessels, it is not lawful to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay to any one except an officer authorized by Act of Congress to collect fees for such service, any remuneration for the shipment of a seaman. If any such advance wages or remuneration shall have been paid or contracted for, the Consul, in making up the account of wages due the seaman upon his discharge, will disregard such advance payment or agreement and award to the seaman the amount to which he would be entitled if no such payment or agreement had been made. Nor should Consuls permit the statute to be evaded indirectly, as by part payment in advance and then stating rate of wages too small. R. S., §§ 4532, 4533; 23 Stat. L. 55, § 10; 24 Id. 80, § 3; 27 Fed. Rep. 764."

We are unable to assent. We regard the act of Congress as clear and that the theatre of its injunction is the harbors of the United States. It is misleading to dwell upon the jurisdiction of other places, which is but another name for control. The jurisdiction, control, is in and by the United States and the command is that advances shall not be deducted from wages of seamen on vessels, American or foreign, while in the waters of the United States. Where they were made or under what circumstances made are not factors in judgment. They are the mere accidents of the situation and if they reach the importance and have the embarrassment depicted by counsel, the appeal must be to Congress, which no doubt will promptly correct the improvidence, if it be such, of its legislation. We have already expressed our view of the control of the language of the law and that it is a barrier against alarms and fault-finding.

It hence follows that we are of opinion the judgment of the Circuit Court of Appeals in each case should be reversed and that of the District Court affirmed.
